



**SPECIAL CITY COUNCIL WORKSESSION  
RICHFIELD MUNICIPAL CENTER, BARTHOLOMEW ROOM  
NOVEMBER 24, 2015  
5:45 PM**

Call to order

1. 5:45 p.m. - 6:25 p.m.  
Update regarding 66th Street median design (Council Memo No. 101)
2. 6:25 p.m. - 6:40 p.m.  
Discussion regarding Stevens Avenue storm (Council Memo No. 101)
3. 6:40 p.m. - 6:55 p.m.  
Discussion regarding standard procedures for City Commissions (Council Memo No. 98)

Adjournment

**Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.**

**CITY OF RICHFIELD, MINNESOTA**  
Office of City Manager

November 19, 2015

Council Memorandum No. 101

The Honorable Mayor  
and  
Members of the City Council

Subject: November 24, 2015 Worksession Items

Council Members:

The upcoming worksession will include the following Public Works items:

**66<sup>th</sup> Street Median Design Update**

Staff will discuss the result of the resident outreach efforts through Richfield Connect and a public open house held November 19 on the proposals to close medians along the corridor.

**Stevens Avenue Storm**

Staff will discuss the two options provided by Hennepin County to address the storm water capacity issues at Stevens Ave and 66<sup>th</sup> Street.

Please contact Kristin Asher, Director of Public Works, at 612-861-9795 for further discussion.

Respectfully submitted,



Steven L. Devich  
City Manager

SLD:jjv

Email: Assistant City Manager  
Department Directors

**CITY OF RICHFIELD, MINNESOTA**  
Office of City Manager

November 12, 2015

Council Memorandum No. 98

The Honorable Mayor  
and  
Members of the City Council

Subject: Standard Procedures for City Commissions

Council Members:

At the November 24, 2015 City Council work session, staff and the City Attorney will be presenting proposed changes to City Code, Section 305, Commissions; Boards. Several substantive, as well as housekeeping changes are being recommended in order to provide more clear, simplified and standard procedures governing commissions. This work is being done in response to the 2015 City Council/Staff goal of enhancing the commission experience.

Currently, there are many inconsistencies between commissions' bylaws and processes. These inconsistencies result in frustration and confusion for both commission chairpersons and staff to interpret and apply. For example, many of the commissions have different processes for the removal of a commissioner and varying attendance rules. Also, several of the commissions have lengthy, onerous bylaws that make it overwhelming and difficult for new commissioners to understand.

In an attempt to be responsive to feedback from commissioners and staff liaisons requesting more simple and consistent procedural rules and to minimize confusion, the attached code amendments are on the November 24, 2015 Regular City Council meeting agenda for 1<sup>st</sup> reading consideration.

Some of the more significant proposed changes to Section 305 include:

- 1) Clarifying youth appointments to require that youth applicants must be at least 15 years of age, a resident of Richfield and currently enrolled in a high school or equivalent;
- 2) Changing the attendance requirement to address issues with non-participating commissioners. Under the new requirement, commissioners must attend at least 75% of regular commission meetings in a twelve month period or be automatically removed from the commission;
- 3) Codifying the rules for residency, terms, and commissioner removal/vacancy rather than having them addressed under separate resolutions;

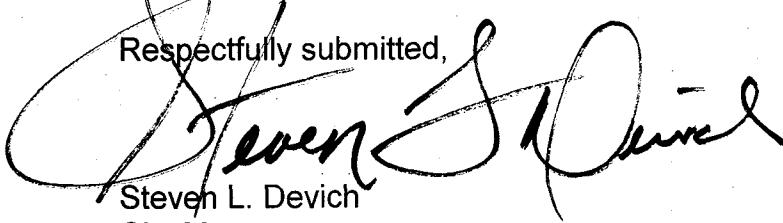
- 4) Directing that city commissions may not adopt bylaws that conflict with Section 305;
- 5) Requiring the use of Sturgis' Standard Code of Parliamentary Procedure when taking formal action; and
- 6) General clean-up.

**Next steps and Timeline:**

After the November 24<sup>th</sup> Council discussion of the proposed code amendments and first reading consideration, a second reading and rescission of several old resolutions is scheduled for the December 8, 2015 City Council meeting. With Council approval of the ordinance amendments, commissions will be directed to go back to review and amend their bylaws so that they conform to Section 305. Commissions will still be able to retain bylaws that are unique and necessary to their particular commissions.

If you have any questions about these proposed amendments and/or process, please contact Assistant City Manager/HR Manager, Pam Dmytrenko at 612-861-9708.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Steven L. Devich".

Steven L. Devich  
City Manager

SLD:pd

Attachment

Email: Assistant City Manager  
Department Directors



BILL NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 305 OF THE CITY CODE  
RELATING TO CITY COMMISSIONS AND BOARDS**

**THE CITY OF RICHFIELD DOES ORDAIN:**

Section 1. Section 305 of the Richfield City Code is amended to add the following new subsection 305.00 as follows:

305.00. – Definitions.

**Subdivision 1.** The following terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

**Subd. 2.** “Commission” means a body established by the City Council to advise the Council on matters of municipal concern. The terms “commission” and “board” may be used interchangeably in this Section.

**Subd. 3.** “Youth” means an individual who is at least 15 years of age.

Sec. 2. Section 305 of the Richfield City Code is amended to add the following new subsection 305.01 as follows:

305.01. – Creation; General requirements. Unless otherwise provided by law or herein, the provisions in this subsection apply to all City commissions.

**Subdivision 1. Creation.** A Commission may be established by a majority of the City Council. The Council shall adopt a resolution or ordinance that will describe the purpose and function of the Commission. City Commissions are advisory bodies to the City Council. The Council shall periodically review the role, responsibilities and procedures of each Commission. The Council may eliminate a Commission by adopting a resolution or ordinance rescinding the resolution or ordinance establishing the Commission.

**Subd. 2. Residency.** Members of city commissions shall be residents of the City, unless an ordinance or resolution expressly provides otherwise.

**Subd. 3. Terms.** The City Council shall appoint members to the commissions for terms not to exceed three years. No member shall serve more than three consecutive terms on the same Commission. Appointment to serve on a Commission for a period of time greater than one-half of a complete term shall be counted as a full term. If the Council appoints an individual who had a break in continuous service of at least one full term, it shall be treated as a first-term appointment. Commissioners may only serve on one Commission at a time.

**Subd. 4. Youth appointments.** The City Council may appoint a maximum of two youth members to certain commissions. Terms for youth appointments shall be one year, commencing on September 1 and ending on August 31. No youth member shall serve more than three consecutive terms on the same Commission. Except as otherwise provided for by resolution of the Council, youth members must be residents of the City and enrolled in a high school or equivalent. A youth member may only serve on one Commission at a time. Youth members are voting members of a Commission.

**Subd. 5. Attendance.** Members are required to attend regular commission meetings. Commission members shall notify the Commission Chair or staff liaison if he or she is unable to attend a meeting. Members who have served at least one full year and do not attend at least seventy-five percent (75%) of the regular commission meetings in the preceding twelve (12) month period will be automatically removed from the commission. The Council shall conduct an annual review of the attendance of members of City commissions.

**Subd. 6. Removal/Vacancy.** Commission members serve at the pleasure of the City Council and, unless prohibited by law, may be removed at any time for any reason. When a vacancy occurs, the Council shall appoint a person to fill the unexpired term of the vacated seat. Unless provided otherwise by law, a seat on a Commission is vacated upon any of the following:

- (a) death;
- (b) failure to attend at least 75% of regular commission meetings in a year;
- (c) removal of legal residence in the City;
- (d) resignation in writing presented to the City Manager;
- (e) removal by the Council; or,
- (f) election or appointment to a public office.

**Subd. 7. Committees.** Commissions may establish committees from time to time as the need arises.

**Subd. 8. Staff/Council Liaisons.** Each January, the City Council shall designate a Council member as liaison and one alternative liaison to each Commission. The City Manager shall appoint one City employee to serve as a staff liaison to each Commission. Council and staff liaisons are not voting members of a Commission.

**Subd. 9. Bylaws/Rules of Procedure.**

- (a) Commissions may adopt bylaws to govern meeting procedures and other matters not addressed in this Section. If the bylaws of a Commission and this Section conflict, this Section shall prevail. Commissions may amend bylaws with approval of a 2/3 majority vote of the Commission.
- (b) At all meetings of a Commission where formal action is required on a matter, the meeting shall be governed by Sturgis' Standard Code of Parliamentary Procedure. At meetings where no action is required, no formal parliamentary procedure shall govern

the conduct of the proceedings unless necessary such as when a formal motion is before the Commission.

Sec. 3. Subsection 305.01 of the Richfield City Code is amended as follows:

~~305.01.~~ 305.03 - Establishment of human rights commission.

**Subdivision 1. Scope of Section.** It is declared that it is the public policy of the City to fulfill its responsibilities as a partner of the state department of human rights in securing for all citizens equal opportunity in housing, employment, public accommodations, public services and education, and to fully implement those goals set forth in Minnesota Statutes, Chapter 363A, the Minnesota Human Rights Act.

**Subd. 2. Establishment of commission.** There is established and continued a human rights commission.

**Subd. 3. Purpose of commission.** The purpose of the Commission is to secure for all citizens equal opportunity in employment, housing, public accommodations, public services and education and full participation in the affairs of this community and to take appropriate action consistent with the Minnesota Human Rights Act. The Commission shall also advise the City Council on long range programs to improve human relations in the City.

**Subd. 4. Composition of the Commission.** The Commission consists of 13 members appointed by the Council. Eleven members shall be appointed for terms of three (3) years, except that (i) a person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor in that term was appointed shall be appointed only for the remainder of such, and (ii) two (2) persons shall be appointed as "youth" members for one (1) year terms. The two (2) youth members shall be given all rights, privileges and responsibilities granted to the other appointed members. ~~Upon the expiration of the member's term of office, a member shall continue to serve until a successor is appointed and qualifies.~~ Members serve without compensation and may be removed from office at any time by the Council, ~~but after a public hearing if a hearing is requested by the member whose removal is being considered.~~

**Subd. 5. Commission's responsibilities.** The Commission shall:

- (a) Adopt bylaws and rules for the conduct ~~t-o~~ of its affairs including the election, assumption of duties and definition of responsibilities of officers and committees;
- (b) Engage in discussions with the state department of human rights for the purpose of delineating cooperative regulatory and enforcement procedures;
- (c) Enlist the cooperation of agencies, organizations and individuals in the community in an active program directed to create equal opportunity and eliminate discrimination and inequalities;
- (d) Formulate a human relations program for the City to provide increased effectiveness and direction to the work of all individuals and agencies addressing themselves to

planning, policy making and educational programming in the area of civil and human rights;

- (e) Advise the City Council and other agencies of the government on human relations and civil rights problems and act in an advisory capacity with respect to planning or operation of any City department on issues of civil and human rights and recommend the adoption of such specific policies or actions as are needed to provide for full equal opportunity in the community;
- (f) Study, investigate and assist in eliminating alleged violation of Minnesota Statutes, Chapter 363A by conference, conciliation and persuasion, and when necessary, cooperate with the state department of human rights in enforcing the provisions of the state act;
- (g) Develop such programs of ~~formal and information~~ education as will assist in the implementation of the Minnesota Human Rights Act and foster the Commission's assumption of leadership in recognizing and resolving potential human rights problems in the community; and
- (h) Develop and implement programs that enhance the advancement of human rights in the community and that promote an awareness of and appreciation for cultural diversity.

**Subd. 6. Investigations, enforcement, penalties.** The Commission may receive and investigate complaints of alleged violations of this Subsection. Investigations shall conform to the ~~No Fault Grievance~~ Complaint Process formulated by the State Department of Human Rights.

**Subd. 7. Adoption by reference.** ~~Minnesota Statutes, chapter 363 is adopted by reference and made a part of this Subsection as is fully set forth herein.~~

Sec. 4. Subsection 305.03 of the Richfield City Code is amended as follows:

~~305.03.~~ 305.05. - Joint police and fire civil service commission.

**Subdivision 1. Single commission created and continued.** The Police Civil Service Commission and the Fire Civil Service Commission of the City have been combined to form a single commission.

**Subd. 2. Duties.** The Joint Commission is created and ~~continued and will~~ serves as both the Police and Fire Civil Service Commission ~~and Firemen's Civil Service Commission.~~

**Subd. 3. Membership.** The Joint Commission consists of three (3) members appointed for staggered terms in the same manner, for the same terms, and with the same qualifications as a police civil service commission under Minnesota Statutes, Chapter 419, sections 419.01 to 419.18. Terms of commissioners are for three (3) years commencing on February 1 of the year of appointment.

Sec. 5. Subsection 305.05 of the Richfield City Code is amended as follows:

~~305.05.~~ 305.07 - Planning ~~agency~~ Commission.

**Subdivision 1. Establishment.** Pursuant to Minnesota Statutes, section 462.354, subdivision 1, there is created and continued a City ~~p~~Planning Commission.

**Subd. 2. Commission form.** Except in cases in which the Planning Commission is authorized by this Code or other applicable law to render a final decision, ~~T~~he Planning Agency shall operate as a Planning Commission serves in an advisory capacity to the City Council. Staff services for the Commission shall be furnished by the Community Development Department of the City. ~~The Commission serves in an advisory capacity to the Council.~~

**Subd. 3. Composition of the Commission.** The Commission consists of seven (7) members appointed by the Council to serve for terms of three (3) years, with terms of members to be staggered so that as nearly equal number of terms as possible shall expire each year. Terms begin on the first day of February. ~~The City Manager, the superintendent of schools for Independent School District No. 280, one (1) Council member and one (1) other representative of the Board of Education of Independent School District No. 280 designated by the district are ex-officio officers and members of the Commission without voting rights.~~

**Subd. 4. Powers and duties of the Commission.** The Planning Commission shall undertake the duties given by Minnesota Statutes, sections 462.351 to 462.354. The Planning Commission shall deliberate and make recommendations, or final decisions as applicable, on:

- ~~(a) Proposed subdivisions and resubdivisions of land;~~
- ~~(b)~~ (a) Proposed amendments to the zoning ordinance code or map;
- ~~(e)~~ (b) Land development applications requiring site plan approval, special interim use permits, conditional use permits or variances from the land development regulations of the City; and
- ~~(d)~~ (c) Such other matters relating to planning and development within the City, as may be referred to it by the Council.

**Subd. 5. General objectives of the Commission.** The Planning Commission shall, as necessary, endeavor to perform the following functions on behalf of the City:

- (a) Subject planning decisions to citizens' examination and influence through technical advisory subcommittees which may study and recommend courses of action on special planning matters;
- (b) Act as an advocate of various beneficial planning projects, as directed by the Council, to stimulate interest and acceptance of planning within the City; and
- (c) Act as a coordinator of planning activities within the City by working with public, quasi-public and private planning groups to coordinate the total planning efforts of the City and other governmental units.

~~Subd. 6. Dismissal of commission members. Commission members serve at the pleasure of the Council. The Council may dismiss members of the Commission with or without cause.~~

~~Subd. 7. Vacancies. The office of a member is vacant upon the member's:~~

- ~~(a) Death;~~
- ~~(b) Disability or failure to serve;~~
- ~~(c) Removal of legal residence from the City;~~
- ~~(d) Resignation in writing;~~
- ~~(e) Removal with or without cause by the Council; or~~
- ~~(f) Election or appointment to an elective public office.~~

~~The Commission shall notify the Council of a vacancy and request appropriate action to fill the vacancy.~~

**Subd. 8 6. Additional powers and duties.** The Council may assign additional duties and responsibilities to the Planning Commission to assist the Commission in effectively carrying out the Commission's objectives, powers and duties.

Sec. 6. Subsection 305.07 of the Richfield City Code is amended as follows:

~~305.07.~~ 305.09 - Board of health.

**Subdivision 1. Creation of board.** Pursuant to Minnesota Statutes, ~~section 145.01~~ Chapter 145A, there is created and continued a board of health.

**Subd. 2. Council to constitute board.** The Board consists of the City Council and a physician who is the health officer of the City.

**Subd. 3. Powers and duties of board.** The Board shall:

- (a) Investigate and make such reports and obey such directions concerning communicable diseases as the State Board of Health may require or give; and
- (b) Cause all laws and regulations relating to the public health, including any and all health regulations contained in this code to be obeyed and enforced.

**Subd. 4. Inspection and enforcement.** The Board and authorized officers or employees of the Board shall have the right to enter into any building, conveyance or place where contagion, infection, filth or other source or cause of preventable disease exists or is reasonably suspect.

**Subd. 5. Uniform enforcement and appeals.** Orders or rules and regulations adopted or issued by the Board shall be enforced in the manner provided in Section 320. Persons aggrieved by an order or rule or regulation of the Board may appeal in accordance with the provisions of Section 320.

Sec. 7. This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

Adopted by the City Council of the City of Richfield, Minnesota this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Debbie Goettel, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth VanHoose, City Clerk



**REGULAR CITY COUNCIL MEETING  
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS  
NOVEMBER 24, 2015  
7:00 PM**

**INTRODUCTORY PROCEEDINGS**

Call to order

Open forum (15 minutes maximum)

***Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council on items not on the agenda. Individuals who wish to address the Council must have registered prior to the meeting.***

Pledge of Allegiance

Approval of the minutes of the Regular City Council Meeting of November 10, 2015.

**PRESENTATIONS**

1. Annual meeting with the Civil Service Commission.
2. Annual meeting with the Transportation Commission.
3. Annual meeting with the Community Services Commission.

**COUNCIL DISCUSSION**

4. Hats Off to Hometown Hits

**AGENDA APPROVAL**

5. Approval of the agenda.
6. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
  - A. Consideration of the approval of a first reading of an ordinance amending Section 305 of the City Code to codify requirements pertaining to city commissions.  
Staff Report No. 186
  - B. Consideration of the approval of the first reading of an ordinance creating a new city code section requiring permits for motion picture and commercial photography events.  
Staff Report No. 187



- C. Consideration of the approval of a contract with Graymont (WI), LLC for the purchase of 1,400 tons of quick lime in the amount of \$233,212.00 for water treatment in 2016.

Staff Report No. 188

- D. Consideration of the approval of a resolution authorizing execution of MnDOT Agreement No. 1001613 between the Minnesota Department of Transportation and the City of Richfield for traffic control maintenance of three traffic signals on 76th Street at Trunk Highway No. 35W.

Staff Report No. 189

- E. Consideration of the approval of the continuation of the agreement with the City of Bloomington for the provision of food inspection services for Richfield for the year 2016.

Staff Report No. 190

- F. Consideration of approval of the 2015-2016 contract with the City of Bloomington, using public health emergency preparedness grant funds distributed by a federal grant from the Centers for Disease Control, to provide services in the area of public health emergency preparedness/Bioterrorism and the development of a response system.

Staff Report No. 191

- G. Consideration of the approval of the amendment to the City of Richfield's 2012-2015 Municipal Recycling Grant application and agreement with Hennepin County.

Staff Report No. 192

7. Consideration of items, if any, removed from Consent Calendar

#### **CITY MANAGER'S REPORT**

8. City Manager's Report

#### **CLAIMS AND PAYROLLS**

9. Claims and payrolls

Open forum (15 minutes maximum)

***Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council on items not on the agenda. Individuals who wish to address the Council must have registered prior to the meeting.***

10. Adjournment

**Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.**



# CITY COUNCIL MEETING MINUTES

## Richfield, Minnesota

### Regular Meeting

**November 10, 2015**

#### CALL TO ORDER

The meeting was called to order by Mayor Goettel at 7:00 p.m. in the Council Chambers.

*Council Members Present:*

Debbie Goettel, Mayor; Edwina Garcia, Tom Fitzhenry; and Michael Howard.

*Council Members Absent:*

Pat Elliott.

*Staff Present:*

Steven L. Devich, City Manager; Melissa Poehlman, Acting Community Development Director; Jay Henthorne, Public Safety Director/Police Chief; Jim Topitzhofer, Recreation Services Director; Betsy Osborn, Support Services Supervisor, Kris Weiby, Facilities Manager; Mary Tietjen, City Attorney; and Cheryl Krumholz, Executive Coordinator.

#### OPEN FORUM

Steven Unkowsy, Richfield Public Schools Superintendent, thanked the City Council for their support in the success of the school referenda in the recent election.

#### PLEDGE OF ALLEGIANCE

Mayor Goettel led the audience in the Pledge of Allegiance.

#### APPROVAL OF MINUTES

M/Fitzhenry, S/Howard to approve the minutes of the (1) Special City Council Worksession of October 27, 2015; and (2) Regular City Council Meeting of October 27, 2015.

Motion carried 4-0.

Item #1	SWEAR-IN RICHFIELD POLICE OFFICERS ROBERT SMITH, PATRICK SHEADY AND JAE QUERN

Public Safety Director Henthorne administered the swear-in of the officers.

<b>Item #2</b>	<b>ANNUAL MEETING WITH THE PLANNING COMMISSION</b>
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Rick Jabs, Chair, presented the annual report.

<b>Item #3</b>	<b>COUNCIL DISCUSSION</b> <ul style="list-style-type: none"><li>• Cancel/reschedule December 22, 2015 Regular City Council Meeting</li><li>• Hats Off to Hometown Hits</li></ul>
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Council Member Garcia announced the Fare for All Holiday Food Package event at the Community Center on November 17, 2015.

Recreation Services Director Topitzhofer announced the following events:

- Turkey Trailblazer 5k & 1k Run/Walk at the Wood Lake Nature Center on November 21, 2015.
- Give to the Max Day on November 12, 2015

Council Member Fitzhenry provided an update on the Beyond the Yellow Ribbon Campaign. He also announced the Veterans' Day celebration at the Honoring All Veterans Memorial on November 11, 2015.

Council Member Howard announced that Senator Amy Klobuchar and Lt. Governor Tina Smith will attend the STEM School Veterans' Day event.

City Manager Devich provided an update on the Portland Avenue road construction project.

Mayor Goettel stated that a ribbon cutting ceremony will be held at the new Army recruiting office at 66<sup>th</sup> Street/Nicollet Avenue.

M/Goettel, S/Fitzhenry to cancel the December 22, 2015 Regular City Council Meeting.

Motion carried 4-0.

<b>Item #4</b>	<b>COUNCIL APPROVAL OF AGENDA</b>
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M/Fitzhenry, S/Howard to approve the agenda.

Motion carried 4-0.

<b>Item #5</b>	<b>CONSENT CALENDAR</b>
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- A. Consideration of the approval of a resolution granting a Conditional Use Permit and Variances to allow an auto repair shop (Pacific Auto Care) at 6600 Portland Avenue. Staff Report No. 177

RESOLUTION NO. 11138

RESOLUTION APPROVING A CONDITIONAL USE PERMIT  
AND VARIANCES FOR AN AUTO REPAIR BUSINESS  
AT 6600 PORTLAND AVENUE

This resolution appears as Resolution No. 11138.

- B. Consideration of the approval of an annual request for a Temporary On Sale Intoxicating Liquor license for the Church of St. Richard, located at 7540 Penn Avenue South, for their Novemberfest event to take place November 14-15, 2015. Staff Report No. 178
- C. Consideration of the approval of an annual request for a Temporary On Sale Intoxicating Liquor license for St. Nicholas Episcopal Church, located at 7227 Penn Avenue South, for their Night Under A Western Sky event to take place November 14, 2015. Staff Report No. 179
- D. Consideration of the approval of setting a public hearing to be held on December 8, 2015, for the consideration of the renewal of On-Sale Intoxicating and Sunday Liquor licenses for 2016 for Last Call Operating Co. II, Inc. d/b/a Champps Americana, Don Pablo's Operating, LLC d/b/a Don Pablo's, El Tejaban Mexican Grill, LLC d/b/a El Tejaban Mexican Grill, Thompson's Fireside Pizza, Inc. d/b/a Fireside Foundry, GM Richfield, LLC d/b/a Four Points by Sheraton Minneapolis Airport, Frenchman's Pub, Inc. d/b/a Frenchman's, Wiltshire Restaurants, LLC d/b/a Houlihan's Restaurant & Bar, Paisan, Inc. d/b/a Khan's Mongolian Barbeque, Lyn 65, LLC d/b/a Lyn 65 Kitchen & Bar, Pizza Luce VII, Inc. d/b/a Pizza Luce, Minneapolis-Richfield American Legion Post 435 and Fred Babcock VFW Post 5555 d/b/a Four Nickels Food & Drink. Staff Report No. 180
- E. Consideration of the approval of the setting of a public hearing to be held on December 8, 2015, for the consideration of the renewal of On-Sale Wine and On-Sale 3.2 Percent Malt Liquor licenses for 2016 for Chipotle Mexican Grill of Colorado, LLC d/b/a Chipotle Mexican Grill, Davanni's, Inc. d/b/a Davanni's Pizza & Hot Hoagies, Joy's Pattaya Thai Restaurant, LLC d/b/a Joy's Pattaya Thai Restaurant, Minnesota Junior Hockey Group, LLC d/b/a Minnesota Magicians (located in the Richfield Ice Arena), My Burger Operations, LLC, d/b/a My Burger, The Noodle Shop Co. Colorado, Inc. d/b/a Noodles & Company (two locations), Patrick's French Bakery, Inc. d/b/a Patrick's Bakery & Café, Henry Thou d/b/a Red Pepper Chinese Restaurant. Staff Report No. 181
- F. Consideration of the approval of setting a public hearing to be held on December 8, 2015, for the consideration of the renewal of Pawnbroker and Secondhand Goods Dealer licenses for 2016 for University Cash Company, LLC d/b/a Avi's Pawn and Jewelry and Metro Pawn and Gun, Inc. Staff Report No. 182

M/Goettel, S/Fitzhenry to approve the Consent Calendar.

Motion carried 4-0.

<b>Item #6</b>	<b>CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM THE CONSENT CALENDAR</b>
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None.

<b>Item #7</b>	<b>CONSIDERATION OF THE SECOND READING OF AN ORDINANCE THAT AMENDS THE CITY'S TOBACCO ORDINANCE AND A RESOLUTION OF SUMMARY PUBLICATION S.R. NO. 183</b>
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Council Member Howard presented Staff Report No. 183.

Mayor Goettel stated that the Advisory Board of Health has reviewed this issue for over a year and she believed the ordinance is appropriate to regulate tobacco use, especially for children.

Council Member Howard expressed support for the ordinance because it is in the best interest of Richfield youth and overall health, especially related to cigar and e-cigarettes. He stated

it was fair to existing businesses to be grandfathered in. He questioned how the ordinance addresses the ability of employees in existing tobacco businesses to fix e-cigarette devices.

City Attorney Tietjen explained the ordinance defines sampling the device before purchasing but does not speak to or deny the repair of e-cigarette devices.

M/Howard, S/Fitzhenry that this constitutes second reading of Bill No. 2015-13, an ordinance amending Section 1146 of the City Code pertaining to tobacco sales and the regulation of smoking and that it be published in the official newspaper, and that it be made part of these minutes, and that the following resolution be adopted and that it be made part of these minutes:

RESOLUTION NO. 11139

RESOLUTION APPROVING SUMMARY PUBLICATION OF AN  
ORDINANCE PERTAINING TO TOBACCO SALES AND THE REGULATION OF SMOKING

Motion carried 4-0. This resolution appears as Resolution No. 11139.

Item #8	<b>CONSIDERATION OF A SECOND READING OF AN AMENDMENT TO THE CITY'S LIQUOR ORDINANCE IN SECTION 1202 THAT WOULD PERMIT MICRO-BREWERIES, MICRO-DISTILLERIES, ASSOCIATED TAPROOMS AND COCKTAIL ROOMS IN THE CITY AND A RESOLUTION AUTHORIZING SUMMARY PUBLICATION OF THE ORDINANCE S.R. NO. 184</b>
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Council Member Fitzhenry presented Staff Report No. 184.

M/Fitzhenry, S/Goettel that this constitutes second reading of Bill No. 2015-14, an ordinance amending Section 1202 of the City Code pertaining to licenses for micro-production facilities and on-sale taprooms and cocktail rooms, and that it be published in the official newspaper, and that it be made part of these minutes, and that the following resolution be adopted and that it be made part of these minutes:

RESOLUTION NO. 11140

RESOLUTION APPROVING SUMMARY PUBLICATION OF  
AN ORDINANCE PERTAINING TO LICENSES FOR MICRO-PRODUCTION  
FACILITIES AND ON-SALE TAPROOMS AND COCKTAIL ROOMS

Council Member Fitzhenry proposed a friendly amendment to the ordinance in Subdivision 18 to remove the 50 percent food requirement.

M/Fitzhenry, S/Goettel to amend Subdivision 18a of the ordinance to eliminate the requirement that restaurants' total sales must be more than 50 percent related to the serving of food.

Motion carried 4-0. This resolution appears as Resolution No. 11140.

Motion carried 4-0. (amendment)

Item #9	<b>CONSIDERATION OF THE SECOND READING OF AN AMENDMENT TO THE CITY'S ZONING ORDINANCE AND A RESOLUTION APPROVING SUMMARY PUBLICATION OF SAID ORDINANCE. THE PROPOSED ORDINANCE WOULD CONDITIONALLY PERMIT MICRO-BREWERIES, MICRO-DISTILLERIES AND ASSOCIATED TAPROOMS/COCKTAIL ROOMS IN A NUMBER OF COMMERCIAL AND MIXED USE DISTRICTS S.R. NO. 185</b>
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Mayor Goettel presented Staff Report No. 185.

M/Goettel, S/Fitzhenry that this constitutes the second reading of Bill No. 2015-15, an ordinance amending the Richfield City Code to allow micro-production facilities and taprooms/cocktail rooms in commercial and mixed-use zoning districts and that it be published in the official newspaper, and that it be made part of these minutes, and that the following resolution be adopted and that it be made part of these minutes;

#### RESOLUTION NO. 11141

#### RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE TO CONDITIONALLY PERMIT MICRO-PRODUCTION FACILITIES AND TAPROOMS/COCKTAIL ROOMS IN COMMERCIAL AND MIXED-USE ZONING DISTRICTS

Motion carried 4-0. This resolution appears as Resolution No. 11141.

<b>Item #10</b>	<b>CONSIDERATION OF NEW 2016 ON SALE WINE AND 3.2 PERCENT MALT LIQUOR LICENSES FOR MINNESOTA JUNIOR HOCKEY GROUP, LLC D/B/A MINNESOTA MAGICIANS LOCATED AT THE RICHFIELD ICE ARENA, 636 EAST 66TH STREET S.R. NO. 186</b>
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Council Member Garcia presented Staff Report No. 186.

Council Member Garcia stated that the Chammps liquor license will continue through the end of 2015 and the Magicians liquor license is effective January 2016.

M/Garcia, S/Goettel to approve the new 2016 on sale wine and 3.2 percent malt liquor licenses for Minnesota Junior Hockey Group, LLC d/b/a Minnesota Magicians located at the Richfield Ice Arena, 636 East 66<sup>th</sup> Street.

Motion carried 4-0.

<b>Item #11</b>	<b>CITY MANAGER'S REPORT</b>
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City Manager Devich encouraged residents to visit Richfield Connect to provide their feedback on the new posted questions.

<b>Item #12</b>	<b>CLAIMS AND PAYROLLS</b>
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M/Fitzhenry, S/Howard that the following claims and payrolls be approved:

<b>U.S. Bank</b>		<b>11/10/15</b>
A/P Checks: 245198-245644	\$	1,418,899.74
Payroll: 114480-114803	\$	558,925.40
TOTAL	\$	1,977,825.14

Motion carried 4-0.

#### OPEN FORUM

None.

<b>Item #13</b>	<b>ADJOURNMENT</b>
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The City Council Meeting was adjourned by unanimous consent at 8:03 p.m.

Date Approved: November 24, 2015

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Debbie Goettel  
Mayor

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Cheryl Krumholz  
Executive Coordinator

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Steven L. Devich  
City Manager



**STAFF REPORT NO. 186**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Pam Dmytrenko, Assistant City Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich, Administrative Services Director  
11/19/2015

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of a first reading of an ordinance amending Section 305 of the City Code to codify requirements pertaining to city commissions.**

**EXECUTIVE SUMMARY:**

In an attempt to be responsive to the City Council's 2015 annual goal to enhance the city commission experience and to feedback received from commissioners and staff liaisons who have expressed frustration and difficulty in interpreting and applying the current commissions' inconsistent bylaws, several amendments, both significant and of a housekeeping nature, are proposed for Section 305 of the City Code. For example, the proposed ordinance includes requirements for youth commissioners, residency, attendance at commission meetings, and a consistent process for removal of commissioners.

The proposed amendments will provide more simple, clear and consistent standard procedures governing city commissions and will apply to all city commissions.

If the ordinance is adopted at second reading, all commissions will be directed by the City Council to amend their respective bylaws to be in conformance with the new code requirements. Staff will also ask Council to also adopt a resolution that rescinds any resolutions relating to commissions that are no longer needed.

**RECOMMENDED ACTION:**

**By Motion: Approve the first reading of an ordinance amending Section 305 of the City Code to codify requirements pertaining to city commissions and schedule a second reading for December 8, 2015.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

Currently, there are several inconsistencies between city commissions' bylaws and processes. These inconsistencies have resulted in frustration and confusion for both commissioners and staff liaisons to interpret and apply.

In response to the City Council/Staff 2015 goal of enhancing the commission experience and to feedback from commissioners and staff liaisons requesting more simple and consistent procedural rules, several amendments to city code Section 305 are proposed. The amendments are both substantive and



housekeeping in nature.

Some of the more significant proposed changes to Section 305 include:

- Clarifying youth appointments to require that youth applicants must be at least 15 years of age, a Richfield resident and currently enrolled in a high school or equivalent;
- Changing the attendance requirement to address issues with non-participating commissioners. Under the new requirement, commissioners must attend at least 75% of regular commission meetings in a 12 month period or be automatically removed from the commission;
- Codifying the rules for residency, commission term lengths and removal/vacancy process rather than having them addressed under separate resolutions;
- Directing that city commissions be in conformance with Section 305; and
- Requiring the use of Sturgis' Standard Code of Parliamentary Procedure.

It is hoped that the adoption of these clear and consistent rules, applicable to all city commissions, will enhance the commission experience by minimizing procedural confusion and providing commissions with the tools necessary to hold effective and productive meetings.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The proposed amendments to Section 305 of the City Code will codify requirements pertaining to city commissions and supersede any city commission bylaws not in conformance.
- The proposed code amendments codify several rules that are currently in resolutions, necessitating the rescission of those resolutions at the December 8, 2015 City Council meeting.

**C. CRITICAL TIMING ISSUES:**

- A second reading of the ordinance amending Section 305 of the City Code is scheduled for the December 8, 2015 City Council meeting.
- If the ordinance amending Section 305 is approved, all city commissions will be directed by the City Council to bring their respective bylaws into conformance with the new city code requirements in early 2016. This schedule ensures that all commissions will be in conformance when new commissioners are appointed in February 2016.

**D. FINANCIAL IMPACT:**

There is no financial impact associated with this action.

**E. LEGAL CONSIDERATION:**

The City Attorney prepared the proposed ordinance amendments and recommended the process for bringing consistency and conformity to city commissions' standard procedures.

**ALTERNATIVE RECOMMENDATION(S):**

Do not approved the proposed ordinance amendments or suggest modifications to the proposed language.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
□ Commission code amendments	Ordinance

**BILL NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 305 OF THE CITY CODE  
RELATING TO CITY COMMISSIONS AND BOARDS**

**THE CITY OF RICHFIELD DOES ORDAIN:**

Section 1. Section 305 of the Richfield City Code is amended to add the following new subsection 305.00 as follows:

305.00. – Definitions.

**Subdivision 1.** The following terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

**Subd. 2.** “Commission” means a body established by the City Council to advise the Council on matters of municipal concern. The terms “commission” and “board” may be used interchangeably in this Section.

**Subd. 3.** “Youth” means an individual who is at least 15 years of age.

Sec. 2. Section 305 of the Richfield City Code is amended to add the following new subsection 305.01 as follows:

305.01. – Creation; General requirements. Unless otherwise provided by law or herein, the provisions in this subsection apply to all City commissions.

**Subdivision 1. Creation.** A Commission may be established by a majority of the City Council. The Council shall adopt a resolution or ordinance that will describe the purpose and function of the Commission. City Commissions are advisory bodies to the City Council. The Council shall periodically review the role, responsibilities and procedures of each Commission. The Council may eliminate a Commission by adopting a resolution or ordinance rescinding the resolution or ordinance establishing the Commission.

**Subd. 2. Residency.** Members of city commissions shall be residents of the City, unless an ordinance or resolution expressly provides otherwise.

**Subd. 3. Terms.** The City Council shall appoint members to the commissions for terms not to exceed three years. No member shall serve more than three consecutive terms on the same Commission. Appointment to serve on a Commission for a period of time greater than one-half of a complete term shall be counted as a full term. If the Council appoints an individual who had a break in continuous service of at least one full term, it shall be treated as a first-term appointment. Commissioners may only serve on one Commission at a time.

**Subd. 4. Youth appointments.** The City Council may appoint a maximum of two youth members to certain commissions. Terms for youth appointments shall be one year, commencing on September 1 and ending on August 31. No youth member shall serve more than three consecutive terms on the same Commission. Except as otherwise provided for by resolution of the Council, youth members must be residents of the City and enrolled in a high school or equivalent. A youth member may only serve on one Commission at a time. Youth members are voting members of a Commission.

**Subd. 5. Attendance.** Members are required to attend regular commission meetings. Commission members shall notify the Commission Chair or staff liaison if he or she is unable to attend a meeting. Members who have served at least one full year and do not attend at least seventy-five percent (75%) of the regular commission meetings in the preceding twelve (12) month period will be automatically removed from the commission. The Council shall conduct an annual review of the attendance of members of City commissions.

**Subd. 6. Removal/Vacancy.** Commission members serve at the pleasure of the City Council and, unless prohibited by law, may be removed at any time for any reason. When a vacancy occurs, the Council shall appoint a person to fill the unexpired term of the vacated seat. Unless provided otherwise by law, a seat on a Commission is vacated upon any of the following:

- (a) death;
- (b) failure to attend at least 75% of regular commission meetings in a year;
- (c) removal of legal residence in the City;
- (d) resignation in writing presented to the City Manager;
- (e) removal by the Council; or,
- (f) election or appointment to a public office.

**Subd. 7. Committees.** Commissions may establish committees from time to time as the need arises.

**Subd. 8. Staff/Council Liaisons.** Each January, the City Council shall designate a Council member as liaison and one alternative liaison to each Commission. The City Manager shall appoint one City employee to serve as a staff liaison to each Commission. Council and staff liaisons are not voting members of a Commission.

**Subd. 9. Bylaws/Rules of Procedure.**

- (a) Commissions may adopt bylaws to govern meeting procedures and other matters not addressed in this Section. If the bylaws of a Commission and this Section conflict, this Section shall prevail. Commissions may amend bylaws with approval of a 2/3 majority vote of the Commission.
- (b) At all meetings of a Commission where formal action is required on a matter, the meeting shall be governed by Sturgis' Standard Code of Parliamentary Procedure. At meetings where no action is required, no formal parliamentary procedure shall govern

the conduct of the proceedings unless necessary such as when a formal motion is before the Commission.

Sec. 3. Subsection 305.01 of the Richfield City Code is amended as follows:

~~305.01.~~ 305.03 - Establishment of human rights commission.

**Subdivision 1. Scope of Section.** It is declared that it is the public policy of the City to fulfill its responsibilities as a partner of the state department of human rights in securing for all citizens equal opportunity in housing, employment, public accommodations, public services and education, and to fully implement those goals set forth in Minnesota Statutes, ~~e~~Chapter 363A, the Minnesota Human Rights Act.

**Subd. 2. Establishment of commission.** There is established and continued a human rights commission.

**Subd. 3. Purpose of commission.** The purpose of the Commission is to secure for all citizens equal opportunity in employment, housing, public accommodations, public services and education and full participation in the affairs of this community and to take appropriate action consistent with the Minnesota Human Rights Act. The Commission shall also advise the City Council on long range programs to improve human relations in the City.

**Subd. 4. Composition of the Commission.** The Commission consists of 13 members appointed by the Council. Eleven members shall be appointed for terms of three (3) years, except that (i) a person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor in that term was appointed shall be appointed only for the remainder of such, and (ii) two (2) persons shall be appointed as “youth” members for one (1) year terms. The two (2) youth members shall be given all rights, privileges and responsibilities granted to the other appointed members. ~~Upon the expiration of the member’s term of office, a member shall continue to serve until a successor is appointed and qualifies.~~ Members serve without compensation and may be removed from office at any time by the Council, ~~but after a public hearing if a hearing is requested by the member whose removal is being considered.~~

**Subd. 5. Commission’s responsibilities.** The Commission shall:

- (a) Adopt bylaws and rules for the conduct ~~to~~ of its affairs including the election, assumption of duties and definition of responsibilities of officers and committees;
- (b) Engage in discussions with the state department of human rights for the purpose of delineating cooperative regulatory and enforcement procedures;
- (c) Enlist the cooperation of agencies, organizations and individuals in the community in an active program directed to create equal opportunity and eliminate discrimination and inequalities;
- (d) Formulate a human relations program for the City to provide increased effectiveness and direction to the work of all individuals and agencies addressing themselves to

planning, policy making and educational programming in the area of civil and human rights;

- (e) Advise the City Council and other agencies of the government on human relations and civil rights problems and act in an advisory capacity with respect to planning or operation of any City department on issues of civil and human rights and recommend the adoption of such specific policies or actions as are needed to provide for full equal opportunity in the community;
- (f) Study, investigate and assist in eliminating alleged violation of Minnesota Statutes, Chapter 363A by conference, conciliation and persuasion, and when necessary, cooperate with the state department of human rights in enforcing the provisions of the state act;
- (g) Develop such programs of ~~formal and information~~ education as will assist in the implementation of the Minnesota Human Rights Act and foster the Commission's assumption of leadership in recognizing and resolving potential human rights problems in the community; and
- (h) Develop and implement programs that enhance the advancement of human rights in the community and that promote an awareness of and appreciation for cultural diversity.

**Subd. 6. Investigations, enforcement, penalties.** The Commission may receive and investigate complaints of alleged violations of this ~~Subsection~~. Investigations shall conform to the ~~No-Fault Grievance~~ Complaint Process formulated by the State Department of Human Rights.

**~~Subd. 7. Adoption by reference. Minnesota Statutes, chapter 363 is adopted by reference and made a part of this Subsection as is fully set forth herein.~~**

Sec. 4. Subsection 305.03 of the Richfield City Code is amended as follows:

~~305.03:~~ 305.05. - Joint police and fire civil service commission.

**Subdivision 1. Single commission created and continued.** The Police Civil Service Commission and the Fire Civil Service Commission of the City have been combined to form a single commission.

**Subd. 2. Duties.** The Joint Commission is created and ~~continued and will~~ serves as both the Police and Fire Civil Service Commission ~~and Firemen's Civil Service Commission.~~

**Subd. 3. Membership.** The Joint Commission consists of three (3) members appointed for staggered terms in the same manner, for the same terms, and with the same qualifications as a police civil service commission under Minnesota Statutes, Chapter 419, sections 419.01 to 419.18. Terms of commissioners are for three (3) years commencing on February 1 of the year of appointment.

Sec. 5. Subsection 305.05 of the Richfield City Code is amended as follows:

~~305.05:~~ 305.07 - Planning ~~agency~~ Commission.

**Subdivision 1. Establishment.** Pursuant to Minnesota Statutes, section 462.354, subdivision 1, there is created and continued a City ~~p~~Planning Commission.

**Subd. 2. Commission form.** Except in cases in which the Planning Commission is authorized by this Code or other applicable law to render a final decision, ~~The Planning Agency shall operate as a Planning Commission serves in an advisory capacity to the City Council.~~ Staff services for the Commission shall be furnished by the Community Development Department of the City. ~~The Commission serves in an advisory capacity to the Council.~~

**Subd. 3. Composition of the Commission.** The Commission consists of seven (7) members appointed by the Council to serve for terms of three (3) years, with terms of members to be staggered so that as nearly equal number of terms as possible shall expire each year. Terms begin on the first day of February. ~~The City Manager, the superintendent of schools for Independent School District No. 280, one (1) Council member and one (1) other representative of the Board of Education of Independent School District No. 280 designated by the district are ex officio officers and members of the Commission without voting rights.~~

**Subd. 4. Powers and duties of the Commission.** The Planning Commission shall undertake the duties given by Minnesota Statutes, sections 462.351 to 462.354. The Planning Commission shall deliberate and make recommendations, or final decisions as applicable, on:

- ~~(a) Proposed subdivisions and resubdivisions of land;~~
- ~~(b)~~ (a) Proposed amendments to the zoning ~~ordinance~~ code or map;
- ~~(c)~~ (b) Land development applications requiring site plan approval, ~~special interim~~ use permits, conditional use permits or variances from the land development regulations of the City; and
- ~~(d)~~ (c) Such other matters relating to planning and development within the City, as may be referred to it by the Council.

**Subd. 5. General objectives of the Commission.** The Planning Commission shall, as necessary, ~~endeavor to~~ perform the following functions on behalf of the City:

- (a) Subject planning decisions to citizens' examination and influence through technical advisory subcommittees which may study and recommend courses of action on special planning matters;
- (b) Act as an advocate of various beneficial planning projects, as directed by the Council, to stimulate interest and acceptance of planning within the City; and
- (c) Act as a coordinator of planning activities within the City by working with public, quasi-public and private planning groups to coordinate the total planning efforts of the City and other governmental units.

~~**Subd. 6. Dismissal of commission members.** Commission members serve at the pleasure of the Council. The Council may dismiss members of the Commission with or without cause.~~

~~**Subd. 7. Vacancies.** The office of a member is vacant upon the member's:~~

- ~~(a) Death;~~
- ~~(b) Disability or failure to serve;~~
- ~~(c) Removal of legal residence from the City;~~
- ~~(d) Resignation in writing;~~
- ~~(e) Removal with or without cause by the Council; or~~
- ~~(f) Election or appointment to an elective public office.~~

~~The Commission shall notify the Council of a vacancy and request appropriate action to fill the vacancy.~~

**Subd. 8 6. Additional powers and duties.** The Council may assign additional duties and responsibilities to the Planning Commission to assist the Commission in effectively carrying out the Commission's objectives, powers and duties.

Sec. 6. Subsection 305.07 of the Richfield City Code is amended as follows:

~~305.07:~~ 305.09 - Board of health.

**Subdivision 1. Creation of board.** Pursuant to Minnesota Statutes, ~~section 145.01~~ Chapter 145A, there is created and continued a board of health.

**Subd. 2. Council to constitute board.** The Board consists of the City Council and a physician who is the health officer of the City.

**Subd. 3. Powers and duties of board.** The Board shall:

- (a) Investigate and make such reports and obey such directions concerning communicable diseases as the State Board of Health may require or give; and
- (b) Cause all laws and regulations relating to the public health, including any and all health regulations contained in this code to be obeyed and enforced.

**Subd. 4. Inspection and enforcement.** The Board and authorized officers or employees of the Board shall have the right to enter into any building, conveyance or place where contagion, infection, filth or other source or cause of preventable disease exists or is reasonably suspect.

**Subd. 5. Uniform enforcement and appeals.** Orders or rules and regulations adopted or issued by the Board shall be enforced in the manner provided in Section 320. Persons aggrieved by an order or rule or regulation of the Board may appeal in accordance with the provisions of Section 320.

Sec. 7. This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

Adopted by the City Council of the City of Richfield, Minnesota this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Debbie Goettel, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth VanHoose, City Clerk





**STAFF REPORT NO. 187**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Pam Dmytrenko, Assistant City Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich, Administrative Services Director  
11/19/2015

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of the first reading of an ordinance creating a new city code section requiring permits for motion picture and commercial photography events.**

**EXECUTIVE SUMMARY:**

Over the past year, the City has received an increase in the number of requests to hold commercial film and photography events in the City. Currently, there is no ordinance language or standard permitting process in place to regulate these types of activities to protect the health, safety and general welfare of the public.

Staff researched applications and fees from surrounding cities and drafted a city code ordinance and created an application process. The proposed ordinance language provides clear guidelines, procedures and processes for the issuance of permits.

**RECOMMENDED ACTION:**

**By motion: Approve the first reading of an ordinance requiring permits for motion picture and commercial photography events and schedule a second reading for December 8, 2015.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

Within the past year, the City has been approached by various individuals and companies requesting to use areas of the City for motion picture or commercial photography events. Currently, the City has no ordinance language or guidelines regulating these types of activities to protect the health, safety and general welfare of the public.

In doing research, staff found that most of the surrounding cities do require a permit for commercial filming and photography. Staff reviewed applications and fees from surrounding cities and drafted a city code ordinance and created an application process. The proposed ordinance language provides clear guidelines, procedures and processes for the issuance of permits.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

The proposed ordinance language would be added to the City Code under a new Section 1197, pertaining to motion pictures and commercial photography.

**C. CRITICAL TIMING ISSUES:**

- The City has recently and continues to be approached by individuals and companies interested in conducting motion picture and commercial photography events in the City. The goal is to have the ordinance language and fees in place by January 1, 2016.
- If approved, a second reading on the ordinance language will be conducted on December 8, 2015.

**D. FINANCIAL IMPACT:**

- A permit application fee will be included in Appendix D.
- Any additional costs associated with motion picture or commercial photography events will be borne by the permit holder.

**E. LEGAL CONSIDERATION:**

The ordinance language has been reviewed by the City Attorney.

**ALTERNATIVE RECOMMENDATION(S):**

Do not approve the ordinance requiring permits for motion picture and commercial photography events or suggest modifications to the proposed language.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
▣ Motion Picture Ordinance	Ordinance

**BILL NO. \_\_\_\_\_**

**AN ORDINANCE CREATING A NEW CITY CODE SECTION 1197  
PERTAINING TO MOTION PICTURES AND COMMERCIAL PHOTOGRAPHY**

**THE CITY OF RICHFIELD DOES ORDAIN:**

Section 1. A new Section 1197 is inserted into the Richfield City Code as follows:

**SECTION 1197 – MOTION PICTURES AND COMMERCIAL PHOTOGRAPHY**

**1197.01. Purpose and objectives.**

The purpose of this Section is to establish standards to protect the health, safety and the general welfare of the public from the undesirable effects associated with the filming of motion pictures and other commercial filming or photography.

**1197.03. Definitions.**

**Subdivision. 1.** “Commercial photography” means all activities associated with the production of motion photography or still photography for which a fee is charged for the use, reproduction or showing of the product of the photography, including, but not limited to, motion pictures, commercials, advertisements, videos or other similar products.

**1197.05. Permit required; exception.**

No person shall engage in commercial photography on any privately-owned property, publicly-owned property, or public rights-of-way unless a permit has been procured therefor. Provided, however, no permit shall be required for the following:

**Subdivision 1.** Commercial photography taking place on private property, provided that: (a) publicly-owned property or public rights-of-way are not used for staging, storage or parking vehicles or equipment; (b) the city manager determines that there will be no disruption to surrounding properties due to noise, traffic, or other similar issues; and (c) no city staff or resources are being utilized.

**Subd. 2.** Commercial photography intended only for the use and enjoyment of those individuals whose person or property are being filmed and for which there is no commercial value, such as family portraiture and wedding photography.

**Subd. 3.** Commercial photographers operating as a lawful home occupation.

1197.07. Contents of application.

**Subdivision 1.** Any person desiring a permit to conduct commercial photography shall make application on a form provided by the city clerk. The applicant shall set forth:

- (a) The name, address and telephone number of the person responsible to fulfill the obligations of the applicant;
- (b) The location of the place where the commercial photography will take place;
- (c) Whether the commercial photography involves still photography or motion photography;
- (d) The time and duration of the filming and related activities;
- (e) Whether or not artificial lighting will be used;
- (f) A description of the equipment that will be used;
- (g) A description of proposed parking areas, street and sidewalk closures and outdoor staging areas;
- (h) A description of the proposed use of city equipment and personnel; and
- (i) An estimate of personnel and equipment needed for the purpose of crowd control, security, traffic control and other public safety needs.

1197.09. Fee.

The fee for a permit required by this Section shall be in the amount set forth in Appendix D. The city may also establish and charge a fee for the rental of city-owned property for commercial photography. In addition to the permit fee, the applicant shall pay all costs and expenses incurred by the city in connection with the commercial photography. Such costs and expenses shall include, but not be limited to, charges for personnel, equipment and damage to streets and other public property. Based upon the information contained in the permit application, the applicant shall deposit with the city clerk a prepayment of the city's estimated costs and expenses. At the conclusion of the commercial photography, actual costs below or in excess of the estimate will be refunded by the city or paid by the applicant as the case may be.

1197.11. Review and approval process.

**Subdivision 1. Procedure.** Applications for permits to allow commercial photography sessions shall be reviewed and approved as set forth in this subsection and subsections 1197.13 and 1197.15.

**Subd. 2. City manager issuance.** The city manager will approve permit applications for the following:

- (a) Commercial photography that does not exceed three consecutive days in duration. Provided, however, the city manager may issue a commercial photography permit for up to ten consecutive days in duration, provided that all photography and artificial lighting takes place indoors and all parking, storage and staging needs are accommodated on the property subject to the permit.
- (b) Commercial photography in which no outdoor filming or outdoor artificial lighting takes place before 7:00 a.m. or after 10:00 p.m.; provided, however, the city manager may authorize outdoor filming and lighting before 7:00 a.m. and after 10:00 p.m., if owners of all residential properties situated wholly or partly within 300 feet of the commercial photography location grant written approval for such activities.
- (c) Commercial photography that takes place only on city-owned property.

1197.13. Permit issuance requirements.

**Subdivision 1.** Notwithstanding subsection 1197.11, subd. 2, the city manager will not issue a permit unless the city manager finds that:

- (a) The commercial photography will not endanger the public health, safety, morals or general welfare; and
- (b) The commercial photography will not cause undue traffic hazards, congestion or parking shortages; and
- (c) The commercial photography will not create an excessive burden or result in damage to parks, streets, rights-of-way or other public property; and
- (d) No commercial photography permit has been issued during the preceding 180 days for a location within 500 feet of the location described in the application; provided, however, the city manager may waive this requirement and issue a new permit if the city manager finds that the purpose and objectives of this Section will be furthered by the issuance of the new permit. The city manager may require the applicant to submit evidence satisfactory to the city manager that demonstrates that properties located in the vicinity of the location proposed for commercial photography will not be adversely affected by the issuance of a new permit.

1197.15. Conditions and restrictions on permit holder.

The city manager may impose conditions and restrictions upon the permit holder as deemed necessary for the protection of the public interest and properties located in the vicinity and to ensure compliance with the requirements of this Code. The city manager may require that the applicant submit evidence that a notice describing the proposed commercial photography, including the proposed dates thereof, has been mailed to all affected property owners as determined by the city manager. If so required, this notice shall be mailed following the issuance of the permit but not less than five days prior to the date the commercial photography will begin.

1197.17. Insurance; indemnity.

The city manager may require the applicant to file with the city clerk a public liability insurance certificate, issued by an insurance company authorized to do business in the state. The policy shall insure the applicant and name the city as an insured in the sum of not less than \$1,000,000.00. The applicant shall also defend, indemnify and hold the city and the city's officials harmless from any loss, cost, damage and expense arising out of the use of any premises for commercial photography.

1197.19. Bond or letter of credit.

The city manager may require the applicant to post a bond or letter of credit as a condition to the issuance of a permit. If so required, the applicant shall file with the city clerk a surety bond that is valid and in force and effect in a sum as determined by the city manager. At the option of the applicant, a letter of credit or cash deposit may be used in lieu of the bond. The letter of credit shall be irrevocable and unconditional, issued by a national or state bank, with its main office located in the Minneapolis-St. Paul Metropolitan Area, and otherwise shall be on terms approved by the city manager. The bond or letter of credit shall be conditioned upon compliance by the applicant with this section and other provisions of this Code and payment to the city of all fees, expenses, fines and penalties required by this Code or state law and payment to the city of any damage the city may sustain by reason of such commercial photography.

1197.21. Duties of permit holder.

Every permit holder under this section shall:

- (a) Use only designated streets and parking areas;
- (b) Promptly restore all public property, streets, sidewalks and rights-of-way to their original condition or better;
- (c) Comply with all conditions and restrictions of the permit; and
- (d) Promptly undertake and complete all filming and related activities.

1197.23. Reserved.

Section 2. This Ordinance will be effective in accordance with Section 3.09 of the City Charter.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
Debbie Goettel, Mayor

ATTEST:

By: \_\_\_\_\_  
Elizabeth VanHoose, City Clerk



**STAFF REPORT NO. 188**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Robert Hintgen, Utilities Superintendent

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director  
11/18/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of a contract with Graymont (WI), LLC for the purchase of 1,400 tons of quick lime in the amount of \$233,212.00 for water treatment in 2016.**

**EXECUTIVE SUMMARY:**

Quick lime is a chemical used in the water treatment process to lower hardness in water. Approximately 1,400 tons of quick lime is required each year to produce softened water. On November 12, 2015, a bid opening was held and only one bid was submitted. Graymont (WI), LLC was the only bidder. They are a qualified supplier that meets all specifications and requirements.

**RECOMMENDED ACTION:**

**By Motion: Approve the contract with Graymont (WI), LLC for the purchase of quick lime in the amount of \$233,212.00 (\$166.58/ton) for 2016.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

History of Quick Lime Contracts

In the bid specifications for Quick Lime, language was included to allow the contract to be extended for additional one-year periods to a maximum contract period of three years (with mutual consent of both parties). However, Graymont did not agree to an extensions 2015 or 2016 so the City went through the bidding process.

On October 29, 2015, the ad for bid was published in the Sun Current with a bid opening on November 12, 2015. Graymont (WI) LLC Company was the only bidder with a price of \$166.58/ton, or 3.5%, price increase for 2016.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

Contracts estimated to have a value over \$100,000 must be made by sealed bids, solicited by public notice and awarded to the lowest responsible bidder.

**C. CRITICAL TIMING ISSUES:**

Quick lime is a necessary chemical required in the water softening process. The current contract expires



on December 31, 2015.

**D. FINANCIAL IMPACT:**

A recent history of prices for this product is:

Years	Base Price	Est. Annual Cost	Vendor
2007	\$95.20/Ton	\$133,280.00	Cutler Magner
2008	\$99.65/Ton	\$139,510.00	Cutler Magner
2009	\$112.00/Ton	\$156,800.00	Graymont
2010	\$120.00/Ton	\$168,000.00	Graymont
2011	\$120.00/Ton	\$168,000.00	Graymont
2012	\$124.45/Ton	\$174,230.00	Graymont
2013	\$143.00/Ton	\$200,200.00	Graymont
2014	\$154.85/Ton	\$216,790.00	Graymont
2015	\$160.95/Ton	\$225,330.00	Graymont
2016	\$166.58/Ton	\$233,212.00	Graymont

Funding for the purchase of quick lime is in the 2016 Water Department Budget, line item 51000-6413 (Chemicals).

**E. LEGAL CONSIDERATION:**

When the purchase of materials, merchandise, equipment or construction exceeds \$100,000, authority to purchase shall be submitted to the City Council for consideration

**ALTERNATIVE RECOMMENDATION(S):**

Council may reject the bid and direct staff to rebid; however, staff believes this is a fair price from a reputable contractor.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
▢ Bid Minutes	Backup Material
▢ Bid Tabulation	Cover Memo
▢ Contract	Cover Memo

**CITY OF RICHFIELD, MINNESOTA**

Bid Opening  
November 12, 2015  
2:00 p.m.

Water Treatment Chemicals – Quick Lime  
Bid No. 15-10

Pursuant to requirements of Resolution No. 1015, a meeting of the Administrative Staff was called by Elizabeth VanHoose, City Clerk, who announced that the purpose of the meeting was to receive, open and read aloud, bids for the Water Treatment Chemicals-Quick Lime, as advertised in the official newspaper on October 29, 2015.

Present: Elizabeth VanHoose, City Clerk  
Butch Lupkes, Utilities Supervisor  
Cheryl Krumholz, City Manager Representative

The following bids were submitted and read aloud:

Bidder's Name	Bid Bond	Non-Collusion	Intent to Comply	Total Bid (per ton)
Graymont, (WI), LLC	Yes	Yes	Yes	\$166.58

The City Clerk announced that the bids would be tabulated and considered at the November 24, 2015 City Council Meeting.

Elizabeth VanHoose City Clerk

**BID TABULATION SHEET**  
**WATER TREATMENT CHEMICALS - QUICK LIME**  
 Bid Number 15-10  
 Bid Opening: 2:00 p.m., Thursday, November 12, 2015  
 Municipal Center, Babcock Room  
 Award of Contract: November 24, 2015

## Bid Number 15-10

Bid Opening: 2:00 p.m., Thursday, November 12, 2015

Municipal Center, Babcock Room

Award of Contract: November 24, 2015

[illegible]

**CITY OF RICHFIELD**  
**HENNEPIN COUNTY, MINNESOTA**  
**C O N T R A C T**

Purchase of Quick Lime  
Bid No. 15-10  
Contract No. 2814

THIS AGREEMENT made this 24<sup>th</sup> day of November 2015 between the City of Richfield, Minnesota, acting by and through its Mayor and City Manager, herein called "The City," and Graymont (WI), LLC, 800 Hill Avenue, Superior, WI 54880, the "Contractor," witnesseth; that the Contractor, in consideration of the payment of the contract price therefore, amounting substantially to TWO HUNDRED THIRTY THREE THOUSAND, TWO HUNDRED TWELVE AND NO/100 (\$233,212.00) Dollars agrees to furnish all materials (except such as are specified to be furnished by the City, if any), all necessary tools and equipment, and to do and perform all the necessary work and labor for the full completion of City projects as follows:

Purchase of 1,400 Tons of Quick Lime for the Water Treatment Plant  
At 6221 Portland Avenue South

as per specifications, for the price and compensation set forth and specified in the proposal signed by the Contractor, which is hereto attached and hereby made a part of this Agreement, all in accordance with the specifications and special provisions therefore on file in the office of the Utility Superintendent, City of Richfield, and hereby made a part of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and there respective successors and assigns.

"The contract price is a unit price of \$166.58 per ton in calendar year 2016."

The Contractor agrees that the work shall be done and performed in the best and most workmanlike manner; that all materials and labor shall be in strict conformity in every respect with the plans, specifications and special provisions for the improvement, shall be subject to inspection and approval of the City or a duly authorized engineer of the City, and in case any material or labor supplied shall be rejected by the City or engineer as defective or unsuitable, then such rejected material shall be removed, and replaced with approved material and the rejected labor shall be done anew to the satisfaction and Approval of the City or Utility Superintendent and at the cost and expense of the Contractor.

Purchase of Quick Lime  
Bid No. 15-10  
Contract No. 2814

The Contractor further agrees that he will commence work immediately upon receipt of contract, and will have all work done and the improvement fully completed to the satisfaction and approval of the City Council of the City of Richfield, Minnesota, as provided in the specifications.

Time is the essence of this contract for prompt completion and if the Contractor shall fail to complete the work within the time herein specified, the City shall have the right to deduct from the unpaid part of the contract price, the amount, or amounts specified in the specifications, or, if no moneys shall be due the Contractor, to recover damages in accordance with said specifications, for each and every working day thereafter during which the contract shall remain unfinished and incomplete, such damages being hereby agreed upon as liquidated damages in lieu of actual damages occasioned by such delay, but special provisions, if any, contained in the proposal are also continued in effect and shall be read and construed as part of this provision as to the completion and liquidated damages for delay.

It is agreed, however, that upon receipt of written notice from the Contractor of the existence of causes over which the Contractor has no control and which will delay the completion of the work, the City Council in its discretion, and in accordance with the specifications, may extend the date hereinbefore specified for completion, and in such case the Contractor shall become liable for said liquidated damages only for failure to perform within the time so extended.

It is agreed, also, that delays caused by the elements or by strikes or other combined action of workmen employed in the construction or in the transportation of materials, but in no part caused or resulting from default or collusion on the part of the Contractor, shall be excused to the extent which the City Council may find and determine such conditions to have delayed completion within the time limit, but the judgement of the City Council in fixing such amount shall be final and conclusive upon the parties hereto.

It is distinctly understood and agreed that no claims for extra work done or materials furnished by the Contractor will be allowed by the City Council except as provided herein, nor shall the Contractor do any work or furnish any materials not covered by the plans, specifications, special provisions, and this contract, unless such work is first ordered in writing, as provided in the specifications.

Any such work or materials which may be done or furnished by the Contractor without such written order first being given shall be at his own risk, cost and expense, and he hereby agrees that without such written order he will make no claim for compensation for work or materials so done or furnished.

Purchase of Quick Lime  
Bid No. 15-10  
Contract No. 2814

It is further agreed, anything to the contrary notwithstanding, that the City of Richfield, City Council, and its agents or employees shall not be personally liable or responsible in any manner to the Contractor, Subcontractors, materialmen, laborers, or to any person or persons whomsoever, for any claim, demand, damages, actions or causes of action of any kind or character arising out of or by reason of the execution of this Agreement or the performance and completion of the work and improvement provided herein.

Dated at Richfield, Minnesota, this 24<sup>th</sup> day of November 2015.

**Signatures for Graymont (WI), LLC.**

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

**Signatures for City of Richfield, MN**

By \_\_\_\_\_  
Debbie Goettel, Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
Steven L. Devich, City Manager

Date \_\_\_\_\_



**STAFF REPORT NO. 189**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Chris Link, Operations Superintendent

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director  
11/18/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of a resolution authorizing execution of MnDOT Agreement No. 1001613 between the Minnesota Department of Transportation and the City of Richfield for traffic control maintenance of three traffic signals on 76th Street at Trunk Highway No. 35W.**

**EXECUTIVE SUMMARY:**

Currently, the City is responsible for all signal maintenance at the following locations:

- Trunk Highway No. 35W West ramps at 76th Street;
- Trunk Highway No. 35W East ramps at 76th Street; and
- Trunk Highway No. 35W from 76th Street to Girard Avenue S

This proposed signal maintenance agreement would share signal maintenance responsibilities between the City and Mn/DOT. Under the agreement, the City will be responsible for:

- Energy costs to power the signals;
- Replacing luminaries above the signals;
- Replacing LED indication lights; and
- Painting of the mast arms.

Mn/DOT will be responsible for:

- The operation and maintenance of the signal controller;
- Signal timing;
- Interconnect between signals; and
- Emergency Vehicle Pre-emption (EVP) systems.

The City and Mn/DOT have similar maintenance agreements at other locations in the city.

**RECOMMENDED ACTION:**

**By Motion: Approve the resolution authorizing execution of MnDOT Agreement No. 1001613 between the Minnesota Department of Transportation and the City of Richfield for shared traffic control maintenance of three traffic signals on 76th Street at Trunk Highway No. 35W.**

**BASIS OF RECOMMENDATION:**

A. **HISTORICAL CONTEXT**

Contained in the Executive Summary.

B. **POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The proposed agreement is consistent with the City's Comprehensive Plan to strengthen coordinated transportation efforts with other communities in the metropolitan area.
- Mn/DOT requires City Council action, by resolution, to enter into an agreement.

C. **CRITICAL TIMING ISSUES:**

None at this time.

D. **FINANCIAL IMPACT:**

The City will no longer incur costs related:

- the operation or maintenance of the signal box;
- signal timing;
- operation and maintenance of the EVP system; and
- maintenance of the signal interconnect system.

E. **LEGAL CONSIDERATION:**

The City Attorney has reviewed the resolution and signal maintenance agreement and will be available for questions.

**ALTERNATIVE RECOMMENDATION(S):**

- Council may postpone action on this item and direct staff how to proceed.
- Council may choose to modify the agreement; however, the agreement is similar to other signal agreements with Mn/DOT that the City approved in the past.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
❑ Resolution	Resolution Letter
❑ MNDOT Agreement 1001613	Contract/Agreement



**RESOLUTION NO.**

**RESOLUTION AUTHORIZING APPROVAL OF MNDOT AGREEMENT NO. 1001613  
BETWEEN THE MINNESOTA DEPARTMENT OF TRANSPORTATION AND THE  
CITY OF RICHFIELD FOR TRAFFIC CONTROL SIGNAL MAINTENANCE**

**WHEREAS**, the Minnesota Department of Transportation has prepared a traffic signal agreement that outlines the responsibilities of the Minnesota Department of Transportation and the City of Richfield to maintain the traffic control signals, including emergency vehicle pre-emption system, on Trunk Highway No. 35W West Ramps at 76<sup>th</sup> Street and Trunk Highway No. 35W East Ramps at Girard Avenue S., and existing interconnect system on Trunk Highway No. 35W from 76<sup>th</sup> Street to Girard Avenue S.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Richfield, Minnesota, as follows:

1. That the City of Richfield enter into MnDOT Agreement No. 1001613 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for power, operation, and maintenance responsibilities for the existing Traffic Control Signals including Emergency Vehicle Pre-emption Systems, on Trunk Highway No. 35W West Ramps at 76<sup>th</sup> Street, and on Trunk Highway No. 35W East Ramps at Girard Avenue S., and for the existing Interconnect on Trunk Highway No. 35W from 76<sup>th</sup> Street to Girard Avenue S. in the City of Richfield, Hennepin County, Minnesota

2. That the Mayor and City Manager are authorized to execute Agreement No. 1001613 and any amendments to the Agreement.

Adopted by the City Council of the City of Richfield, Minnesota this 24th day of November, 2015.

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Debbie Goettel, Mayor

ATTEST:

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Elizabeth VanHoose, City Clerk

**STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
And  
CITY OF RICHFIELD  
TRAFFIC CONTROL SIGNAL  
MAINTENANCE AGREEMENT**

<b>Control Section (C.S.):</b>	<u>2782</u>
<b>Trunk Highway Number (T.H.):</b>	<u>35W = 394</u>
	<u>20587 West Ramp</u>
<b>Signal System IDs</b>	<u>38230 East Ramp</u>

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Richfield acting through its City Council ("City").

**Recitals**

1. The City and the State wish to define their respective power, operation, and maintenance responsibilities for the existing Traffic Control Signals ("Signal Systems") including Emergency Vehicle Pre-emption Systems ("EVP Systems"), on Trunk Highway No. 35W West Ramps at 76<sup>th</sup> Street, and on Trunk Highway No. 35W East Ramps at Girard Avenue S., and for the existing Interconnect ("Interconnect") on Trunk Highway No. 35W from 76<sup>th</sup> Street to Girard Avenue S. in the City of Richfield, Hennepin County, Minnesota; and
2. The City and the State will participate in the power, operation, and maintenance of the existing Signal Systems, EVP Systems, and Interconnect.
3. The City will, at its own cost continue to be responsible for all power, operation, and maintenance of the existing signal system at the intersection of West 76<sup>th</sup> Street at Knox Avenue S. in the City of Richfield, Hennepin County, Minnesota.
4. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

**Agreement**

**1. Term of Agreement; Survival of Terms**

- 1.1. **Effective date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 5. Liability; Worker Compensation Claims; Insurance; 7. State Audits; 8. Government Data Practices; 9. Governing Law; Jurisdiction; Venue; and 11. Force Majeure. The terms and conditions set forth in Article 2. Signal Systems, EVP Systems, and Interconnect – Power, Operation, and Maintenance may be terminated by another Agreement between the parties.

## 2. Signal Systems, EVP Systems, and Interconnect - Power, Operation, and Maintenance

Power, operation, and maintenance responsibilities will be as follows for the existing Signal Systems and EVP Systems on Trunk Highway No. 35W West Ramps at 76<sup>th</sup> Street (System "A"), and on Trunk Highway No. 35W East Ramps at Girard Avenue S. (System "B"), and for the existing Interconnect on Trunk Highway No. 35W from 76<sup>th</sup> Street to Girard Avenue S.

### 2.1. City Responsibilities

- A. **Power.** The City will continue to pay all monthly electrical service expenses necessary to operate the Signal Systems, EVP Systems, and Interconnect.
- B. **Minor Signal System Maintenance.** The City will provide for the following at its own cost.
  - i. Maintain the signal pole mounted luminaires, including replacing the luminaires when necessary. The luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.
  - ii. Replace the Signal Systems LED indications. Replacing LED indications consists of replacing each LED indication when it reaches end of life per the MnDOT Traffic Engineering Manual or fails or no longer meets Institute of Traffic Engineers (ITE) standards for light output.
  - iii. Clean the Signal Systems controller cabinet and service cabinet exteriors.
  - iv. Clean and paint the Signal Systems and luminaire mast arm extensions. Painting will be in accordance with MnDOT Standard Specification 2565.3T, unless approved by the State's District Traffic Engineer.

### 2.2. State Responsibilities

- A. **Interconnect, Signing, Other Maintenance, and Timing.** The State will maintain the Interconnect (between System "A" and System "B") and signing, and perform all other Signal System, APS, and signal pole luminaire circuit maintenance at its own cost. All Signal System timing will be determined by the State, and no changes will be made without the State's approval.
- B. **Locating and Ownership.** The State will perform all Gopher State One Call locating and as owner reserves the right to schedule future replacement and relocation.
- C. **EVP Systems Operation.** The EVP Systems will be installed, operated, maintained, and removed according to the following conditions and requirements:
  - i. All maintenance of the EVP Systems must be done by State forces.
  - ii. Emitter units may be installed only on authorized emergency vehicles, as defined in Minnesota Statutes § 169.011, Subdivision 3. Authorized emergency vehicles may use emitter units only when responding to an emergency. The City will provide the State's District Engineer or their designated representative a list of all vehicles with emitter units, if requested by the State.
  - iii. Malfunction of the EVP Systems must be reported to the State immediately.
  - iv. In the event the EVP Systems or its components are, in the opinion of the State, being misused or the conditions set forth in Paragraph ii. above are violated, and such misuse or violation continues after the City receives written notice from the State, the State may remove the EVP Systems. Upon removal of the EVP Systems pursuant to this Paragraph, all of its parts and components become the property of the State.
  - v. All timing of the EVP Systems will be determined by the State

- 2.3. **Right of Way Access.** Each party authorizes the other party to enter upon their respective public right of way to perform the power, operation, and maintenance activities described in this Agreement.
- 2.4. **Related Agreements.** This agreement will supersede and terminate Agreement No. 91890M, dated January 28, 2008, between the parties, for the intersections of Trunk Highway No. 35W West Ramps at 76<sup>th</sup> Street, Trunk Highway No. 35W East Ramps at Girard Avenue S., and West 76<sup>th</sup> Street at Knox Avenue S. in the City of Richfield, Hennepin County, Minnesota.

### 3. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

3.1. The State's Authorized Representative will be:

Name/Title: Allan Espinoza, MnDOT Metro District Traffic Engineering, (or successor)  
Address: 1500 County Road B2 West, Roseville, MN 55113  
Telephone: (651) 234-7812  
Fax: (651) 234-7850

3.2. The City's Authorized Representative will be:

Name/Title: Jeff Pearson, Richfield Transportation Engineer (or successor)  
Address: Richfield Municipal Center, 6700 Portland Avenue, Richfield, MN 55423  
Telephone: (612) 861-9791  
Fax: (612) 861-9388

### 4. Assignment; Amendments; Waiver; Contract Complete

- 4.1. **Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 4.2. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 4.3. **Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 4.4. **Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

### 5. Liability; Worker Compensation Claims; Insurance

- 5.1. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.
- 5.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

**6. Nondiscrimination**

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

**7. State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

**8. Government Data Practices**

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either the City or the State.

**9. Governing Law; Jurisdiction; Venue**

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**10. Termination by Mutual Agreement**

This Agreement may be terminated by mutual agreement of the parties.

**11. Force Majeure**

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

[The remainder of this page has been intentionally left blank]

**CITY OF RICHFIELD**

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

Recommended for Approval:

By: \_\_\_\_\_  
(District Traffic Engineer)

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
(District Engineer)

Date: \_\_\_\_\_

**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_  
(With delegated authority)

Date: \_\_\_\_\_

**INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.**



**STAFF REPORT NO. 190**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Betsy Osborn, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Public Safety Director  
11/17/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of the continuation of the agreement with the City of Bloomington for the provision of food inspection services for Richfield for the year 2016.**

**EXECUTIVE SUMMARY:**

The City of Bloomington and the City of Richfield have had a contract for over 30 years for Bloomington to provide inspection and enforcement services in the areas of food, beverage, lodging and public swimming pools along with plan check work for food services to Richfield.

The last audit conducted by the Minnesota Department of Health on Bloomington and Richfield's food, beverage and lodging program, which was last conducted in 2010, resulted in both of them being in the top 7 of all 32 licensed jurisdictions in the State of Minnesota and receiving their highest score given.

The proposed contract for 2016 for these services will be \$126,500 compared to the 2015 contract amount of \$122,800. This is a 3% increase over the dollar amount paid to Bloomington in 2015. The increase is tied into increased benefit costs and staff salaries.

**RECOMMENDED ACTION:**

**By motion: Approval of the continuation of the agreement with the City of Bloomington for the provision of food inspection services for Richfield for the year 2016.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The City of Bloomington has provided inspection/enforcement services for over 30 years to the City of Richfield in the area of food, beverage, lodging and public swimming pools.
- The proposed contract for 2016 for these services will be \$126,500, compared to the 2015 contract amount of \$122,800. This is a 3% increase that is primarily as a result of increased benefit and salary costs.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The City of Bloomington has sufficient resources to provide a professional level of inspection services to Richfield residents. Annual evaluations of their services have shown that they are

providing efficient services in a cost-effective manner.

**C. CRITICAL TIMING ISSUES:**

- N/A

**D. FINANCIAL IMPACT:**

- A 3% budget increase had been communicated to Richfield earlier by Bloomington so the amount of \$126,500 has been captured in Richfield's 2016 budget.

**E. LEGAL CONSIDERATION:**

- The City Attorney has reviewed the contract and has approved of it and its contents.

**ALTERNATIVE RECOMMENDATION(S):**

- The Council could decide to have Richfield provide its own food service inspections, beverage and lodging and the public swimming pools inspections and plan to check food services; however, the State would have to approve this change and would likely be concerned about staffing, response and capacity issues. The cost of hiring the staff necessary to provide the same level of services and administrative support would be more than the current expenditures and would require a significant budget increase.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
□ 2016 Bloomington Food Inspection Contract	Cover Memo



## A G R E E M E N T

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Richfield (hereinafter referred to as "Richfield") and the City of Bloomington (hereinafter referred to as "Bloomington").

WHEREAS, Richfield is authorized and empowered to provide for various types of environmental health inspections and code enforcement to ensure the public health, welfare and safety; and

WHEREAS, it is the desire of the parties and the purpose of this agreement that certain of such services be performed by Bloomington on behalf of Richfield;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the above parties hereto agree as follows:

1. The term of this Agreement shall be from January 1, 2016 through December 31, 2016, subject to termination as provided in paragraph 6.
2. For the term of this Agreement, Bloomington shall provide the following services:
  - a. Food establishment inspections and code enforcement as necessary. A minimum of two (2) inspections will be done of all "high risk" food service establishments (license types I and II) and schools per year. "Medium risk" food establishments required to have a certified food manager (license type III) will be inspected twice (2) per year. "Medium risk" food establishments not required to have a certified food manager (license type IV) and "Low risk" (license type V) food establishments will be inspected once (1) per year.
  - b. Plan check and preopening construction inspections for new and remodeled food, lodging, therapeutic massage and body art establishments.
  - c. All public swimming pools inspected at least once (1) per year with a goal of two (2) inspections per year. This is in addition to an opening inspection of all outdoor public pools at the beginning of the summer swimming season.
  - d. All lodging establishments inspections at least once (1) per year.
  - e. All therapeutic massage and body art establishments inspections at least once (1) per year.

f. Investigation and resolution of complaints associated with food, lodging, therapeutic massage and body art establishments and public swimming pools.

3. Bloomington shall have control over the manner in which the inspections, plan review and code enforcement activities are conducted and over the determination of what enforcement action is appropriate and consistent with Richfield City Code Sections 617, 618, 619, 630 and 1188, and other policies as established by the City of Richfield.

4. Bloomington shall assume the expense of performing the inspections and code enforcement.

5. In 2016, Richfield shall pay Bloomington the sum of ONE HUNDRED TWENTY-SIX THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS (\$126,500.00) for services provided pursuant to this Agreement. One-half of this amount shall be due on June 30, 2016, and the remainder shall be due on November 30, 2016.

6. Either party may terminate this Agreement as follows:

- a. Upon the expiration of 30 days after service of written notice upon the other party; or
- b. At any time, upon agreement of the parties; or
- c. In any event on December 31, 2016.

7. In the event of a termination prior to December 31, 2016, a prorata reduction of the compensation owed by Richfield to Bloomington shall occur which reflects the period remaining on the Agreement at the time of termination.

8. Bloomington agrees to defend, indemnify and hold harmless Richfield, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses arising out of or resulting from Bloomington's performance of the duties required under this Agreement, provided that any such claim, action, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or to the injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Bloomington. This provision shall not be construed as a waiver by either party of any defenses, immunities or limitators on liability with respect to claims made by third parties.

9. Richfield agrees to defend, indemnify and hold harmless Bloomington, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses arising out



of or resulting from Richfield's performance of the duties required under this Agreement, provided that any such claim, action, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or to the injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Richfield. This provision shall not be construed as a waiver by either party of any defenses, immunities or limitators on liability with respect to claims made by third parties.

10. Bloomington shall carry municipal liability insurance in the amount of at least \$500,000 per individual and \$1,500,000 per occurrence. Bloomington shall carry property damage liability insurance in the amount of \$100,000. Richfield shall be named as an additional insured on Bloomington's municipal liability policy and a certificate of said insurance shall be provided to Richfield upon request. Bloomington shall carry Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181, Subd. 2 and further agrees to provide a certificate of said insurance to Richfield upon request.

11. Any employee assigned by Bloomington to perform its obligations hereunder shall remain the exclusive employee of Bloomington for all purposes including, but not limited to, wages, salary and employee benefits.

12. In addition to the services listed in Paragraph 2 above, Bloomington shall, upon request, also provide for and on behalf of Richfield elevated blood lead case environmental assessment and sample laboratory analysis services.

Such services shall be paid for by Richfield at the hourly rate of \$62.00 per hour plus the direct cost of all laboratory sample analysis, and said hourly rate shall be separate from, and in addition to, the payment provided for by Paragraph 5 of this Agreement. All other provisions of this Agreement shall remain applicable with respect to the lead assessment services being provided.

13. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the persons employed by Bloomington as the agent, representative or employee of Richfield for any purpose or in any manner whatsoever. Bloomington is to be and shall remain an independent contractor with respect to all services performed under this contract. Bloomington represents that it has, or will secure at its own expense, all personnel required in performing services under this contract. Any and all personnel of Bloomington or other persons, while engaged in the performance of any work or services required by Bloomington under this contract, and shall

not be considered employees of Richfield, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against Bloomington, its officers, agents contracts or employees shall in no way be the responsibility of Richfield; and Bloomington shall defend, indemnify and hold Richfield, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from Richfield, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensations, Unemployment Compensation, disability, severance pay and PERA.

14. The books, records, documents, and accounting procedures of Bloomington relevant to this Agreement, are subject to examination by Richfield and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subd. 5.

15. This Agreement represents the entire Agreement between Bloomington and Richfield and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof, any amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.

16. The City of Bloomington and the City of Richfield agree to comply with the Americans with Disabilities Act (ADA) including all applicable provisions of Title II – Public Services and in accordance with 28 C.F.R. Part 35 Subpart B – Section 35.130 of the US Department of Justice Regulations, Section 504 of the Rehabilitation Act of 1973, and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The City of Bloomington agrees to hold harmless and indemnify the City of Richfield from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by Bloomington. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The City of Bloomington agrees to utilize its own text telephone or the Minnesota TTY Relay Service in order to comply with accessibility requirements. The City of Richfield has designated coordinators to facilitate compliance with the Americans with





Disabilities Act of 1990, as required by 28 C.F.R. Part 35 Subpart B - Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.


17. The City of Bloomington and the City of Richfield agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center, 2101 Hennepin Avenue South; Suite 100, Minneapolis, Minnesota, 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

18. Both parties agree to comply with all applicable state, federal and local laws, rules and regulations.

IN WITNESS WHEREOF, the parties have set forth their hands on the day and year first written above.

	CITY OF BLOOMINGTON
DATED: <u>8/3/2015</u>	BY: <u></u>
	Its Mayor
DATED: <u>8/3/2015</u>	BY: <u></u>
	Its City Manager

Reviewed and approved by the City Attorney.

  
City Attorney

	CITY OF RICHFIELD
DATED: _____	BY: _____
	Its Mayor
DATED: _____	BY: _____
	Its City Manager



**STAFF REPORT NO. 191**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Betsy Osborn, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Public Safety Director  
11/17/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of approval of the 2015-2016 contract with the City of Bloomington, using public health emergency preparedness grant funds distributed by a federal grant from the Centers for Disease Control, to provide services in the area of public health emergency preparedness/Bioterrorism and the development of a response system.**

**EXECUTIVE SUMMARY:**

The City of Richfield has had a Public Health Emergency Preparedness contract with the City of Bloomington to provide public health emergency preparedness services on Richfield's behalf for twelve years. This is Richfield's 2015-2016 contractual agreement with Bloomington that requires City Council approval.

The City of Richfield will receive \$36,800 for the grant cycle which runs from July 1, 2015 - June 15, 2016. The contract with the City of Bloomington for this same period of time for public health emergency preparedness is in the amount of \$33,800 with a second amount of \$12,000 being passed through directly to Bloomington to meet the Cities Readiness Initiative (CRI) which is intended to be used metro wide to regionally fund public health emergency preparedness planning, exercise, training and activities. A remaining amount of \$3,000 is retained by Richfield for our staff time, training, planning and exercise in public health emergency preparedness activities.

**RECOMMENDED ACTION:**

**By Motion: Approve the 2015-2016 contract with the City of Bloomington, using federal grant funds, to provide services in the area of public health emergency preparedness/Bioterrorism and the development of a response system.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

The State of Minnesota has received funds from the federal government (Centers for Disease Control) to be used in developing agencies' public health emergency preparedness/response to Bioterrorism or a large public health disease outbreak. This is part of a nationwide effort to respond to serious public health emergencies. There are specific requirements in the grant in the areas of coordination, assessment, planning and exercise, response surveillance, Health Alert Network, risk communication training and providing services and activities to improve the mass dispensing of medicines and medical

supplies through the Cities Readiness initiative.

Richfield continues to pool these federal grant dollars with Bloomington and Edina with a portion of these funds used to support a Public Health Emergency Preparedness Coordinator for the three cities. Nick Kelley, Public Health Emergency Preparedness Coordinator, is representing the Tri City area (Bloomington, Edina and Richfield) and has been regularly meeting with Richfield and Edina health staff to plan and develop the requirements of the grant funds.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

The City of Richfield became a Local Public Health Agency (LPHA) in 1977, which makes the City eligible to receive these grant funds to use in the development of a public health emergency response system specific to Richfield and its needs.

**C. CRITICAL TIMING ISSUES:**

These funds are part of a nationwide effort by the Federal government to respond to serious public health emergencies, to include threats of Bioterrorism.

**D. FINANCIAL IMPACT:**

Funds being used are those given to Richfield as an LPH agency, from the federal government, to develop a system responding to public health emergency preparedness and Bioterrorism threats.

**E. LEGAL CONSIDERATION:**

- The City must comply with the requirements of the grant in order to receive grant funds.
- The City Attorney has reviewed the contents of the contract and has approved it.

**ALTERNATIVE RECOMMENDATION(S):**

The City Council could decide not to approve the contract with the City of Bloomington for the services of a Public Health Emergency Preparedness Coordinator in developing a public health emergency preparedness/Bioterrorism plan. This would mean that the City would have to hire a staff person to assume some of the grant's responsibilities, which cannot be met with current City staffing levels and would result in a significant budget increase.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
Public Health Emergency Preparedness Contract	Contract/Agreement

**AGREEMENT BETWEEN  
THE CITIES OF BLOOMINGTON AND RICHFIELD  
FOR PUBLIC HEALTH PREPAREDNESS AND RESPONSE TO BIOTERRORISM**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 between the City of Bloomington, acting through its Public Health Division, a Minnesota municipal corporation, located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as "Bloomington"), and the City of Richfield, a Minnesota municipal corporation, located at 6700 Portland Avenue, Richfield, Minnesota 55423 (hereinafter referred to as "Richfield").

**WITNESSETH**

**WHEREAS**, Bloomington warrants and represents that its Division of Public Health is a duly certified public health agency operating in accordance with all applicable federal and state requirements; and

**WHEREAS**, Bloomington's Division of Public Health provides Public Health Emergency Preparedness Services to respond to bioterrorism, infectious diseases, and other threats to public health including, but not limited to coordination, assessment, planning and exercise, response, surveillance, Health Alert Network (HAN), and training (hereinafter referred to as "PH Emergency Preparedness Services"); and provides services and activities to improve the mass dispensing of medicines and medical supplies through the Cities Readiness Initiative (hereinafter referred to as "CRI Duties"); and

**WHEREAS**, Richfield wishes to promote, support, and maintain the health of its residents by providing public health emergency preparedness, and CRI planning activities, and to contract with Bloomington, through its Division of Public Health, to provide such services to residents of Richfield; and

**NOW, THEREFORE**, in consideration of the terms and conditions expressed herein, the parties agree as follows:

**I. TERM OF AGREEMENT**

The term of this Agreement shall be from July 1, 2015 through June 30, 2016, subject to termination as provided in Article V.

**II. DUTIES OF PARTIES**

- A. Bloomington shall provide residents of Richfield with the PH Emergency Preparedness Services as further described in Exhibit A attached.



- B. It shall be the sole responsibility of Bloomington to determine the qualifications, functions, training, and performance standards for all health service personnel who render PH Emergency Preparedness Services and CRI Duties under this Agreement.
- C. Bloomington will communicate with Richfield relative to PH Emergency Preparedness Services and CRI Duties to be performed hereunder by Bloomington, such communication to be in the form of reports, conferences, or consultations, as Richfield requests.
- D. At Richfield's request, and not more than two (2) times during the term of this Agreement, responsible administrative officers from Bloomington shall attend meetings of the Richfield City Council or appropriate board or commission to answer questions and give further information relative to the activities performed and PH Emergency Preparedness Services and CRI Duties rendered under this Agreement.
- E. The parties shall defend, indemnify and hold each other and their officials, employees and agents harmless from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the other's (including officials, agents or employees) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of the acting party.
- F. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Bloomington's staff as the agents, representatives or employees of Richfield for any purpose in any manner whatsoever. Bloomington and its staff are to be and shall remain an independent contractor with respect to all services performed under this Agreement. Bloomington represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of Bloomington or other persons, while engaged in the performance of any work or services required under this Agreement, shall not be considered employees of Richfield, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against Bloomington, its officials, agents, contractors or employees shall in no way be the responsibility of Richfield; and Bloomington shall defend, indemnify and hold Richfield, its

officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Bloomington personnel shall not require be entitled to any compensation, rights or benefits of any kind whatsoever from Richfield, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

- G. The parties agree to comply with the Minnesota State Human Rights Act, Minnesota Statutes, Chapter 363A, as amended.
- H. To the extent allowed by law, the parties agree to maintain, during the entire term of this Agreement, the following insurance coverages, in an amount equal to, or greater than, the minimum limits described below. Neither party shall allow any subcontractor to commence work until all insurance has been obtained and copies have been filed and accepted by the other party. All respective insurance must be provided at each party's own expense and at no additional cost to the other party.
  - 1. Commercial General Liability - Bodily injury in the amount of at least \$500,000 per individual and \$1,500,000 per occurrence for injuries or death arising out of each occurrence. In the alternative, each party may maintain a general aggregate of at least \$2,000,000.
  - 2. Property Damage Liability - Property damage liability in the amount of \$1,500,000 for each occurrence.
  - 3. Automotive Liability - Automotive liability in the amount of \$500,000 per individual and \$1,500,000 per occurrence for any injuries, including death, arising out of each occurrence and property damage coverage of \$1,500,000 for each occurrence.
  - 4. Workers Compensation - Each party shall carry Workers Compensation Insurance as required by Minnesota Statutes, Section 176.181, subd. 2.
  - 5. Professional Liability - Each party agrees to maintain professional liability insurance in the amount of at least \$1,000,000 during the term of this Agreement.
  - 6. Additional Insured - Each party further agrees to name the other party as additional insured on its Commercial General Liability policy, and to provide an endorsement of such status to the other party before any work on this project may commence.
  - 7. Notification/Cancellation - Each party agrees to notify the other party thirty (30) days prior to cancellation or a change in any of the aforementioned insurance policies.
- I. Bloomington agrees that Richfield will own and have the right to use, reproduce and apply as it desires, any data, reports, analyses and materials which are collected or developed by Bloomington or anyone acting on its behalf as a result of this Agreement.

### III. PAYMENT

A. Richfield agrees to pay to Bloomington the not-to-exceed amounts of THIRTY THREE THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$33,800.00) for PH Emergency Preparedness Services, TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00) for CRI Duties, and FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) for Ebola Response Duties, for a total not-to-exceed amount of FIFTY THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$50,800.00) during the term of this Agreement, to be paid according to the following terms:

1. Bloomington shall bill Richfield for PH Emergency Preparedness Services identified on Exhibit A as follows:

Invoice Date	Amount
Upon Contract Execution	\$12,700
December 1, 2015	\$12,700
March 1, 2016	\$12,700
June 1, 2016	\$12,700

Payment shall be made within thirty (30) days of receipt by Richfield of Bloomington's invoice.

2. In the event Richfield desires to inspect the financial books and records of Bloomington related to the providing of PH Emergency Preparedness Services and CRI Duties by Bloomington, Bloomington shall make its financial books and records available at the Bloomington City Hall for inspection and copying by Richfield, or any agent, employee, or representative of Richfield, upon reasonable request during business hours.
3. In the event of termination pursuant hereto, the payment next due shall be prorated and paid for only the period ended on the date of termination, and Richfield shall pay such reduced payment for the period ended on the date of termination, within thirty (30) days after receipt of Bloomington's invoice.

### IV. GENERAL PROVISIONS

- A. Entire Agreement. This Agreement represents the entire Agreement between the parties and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof; and amendments, addenda,

alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.

- B. Americans With Disability Act. The parties agree to comply with the Americans With Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The parties agree to hold harmless and indemnify the other from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by Bloomington. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The parties have designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.
- C. Minnesota Government Data Practices Act. The parties will comply with all applicable provisions of the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, as amended.
- D. Applicable Laws. This Agreement shall be interpreted using the laws of the State of Minnesota. The parties agree to comply with all applicable local, state and federal laws, rules, regulations and ordinances in the performance of the duties of this Agreement.
- E. Assignment. This Agreement shall not be assignable except with the written consent of the parties.
- F. Examination of Documents. The books, records, documents, and accounting procedures of Bloomington, relevant to this Agreement, are subject to examination by Richfield, and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5.
- G. Mediation. Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, MN 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.
- H. Payment of Subcontractors. Bloomington agrees that it must pay any subcontractor within

ten (10) days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. Bloomington agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorneys fees, incurred in bringing the action.

- I. Adherence to City Policies. Bloomington agrees, as a condition of being awarded this Agreement, to require each of its agents, officers and employees to abide by the City of Richfield's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City of Richfield property at all times while performing duties pursuant to this Agreement. Bloomington agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Agreement by Richfield.
- J. Severability. If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable such decision shall not affect the validity of any remaining terms or conditions in this Agreement.
- K. Signatory. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

## **V. TERMINATION**

Either party may terminate this Agreement for any reason upon giving thirty (30) days' advanced written notice to the other party.

The parties reserve the right to cancel this Agreement at any time in event of default or violation by the other party of any provision of this Agreement. The parties may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF BLOOMINGTON**

DATED: \_\_\_\_\_

Reviewed and approved by the City Attorney.

BY: \_\_\_\_\_  
Its City Manager

\_\_\_\_\_  
City Attorney

**CITY OF RICHFIELD**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Its Mayor

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Its City Manager

Exhibit A:  
PH Emergency Preparedness Services

In collaboration with Richfield's staff, Bloomington will provide the following services:

1. Develop a work plan for incorporating the grant duties listed in this Exhibit A. Bloomington and Richfield shall work with the regional Public Health Preparedness Consultants (assigned by the Minnesota Department of Health (MDH)) to gain approval for Richfield's work plan.
2. Complete and submit Capability Planning Guide (CPG) to MDH.
3. Complete and submit Performance Measure data elements as required by the Centers for Disease Control and Prevention (CDC).
4. Continue building community support within the city of Richfield, while assuring functional and access needs of at-risk individuals are addressed. Present to community organizations or groups who are not familiar with public health's response and recovery roles.
5. Continue to build partnerships within the city of Richfield, based on gaps with the eleven (11) CDC-defined community sectors, while assuring functional and access needs of at-risk individuals are addressed. Focus will be on those sectors with which increased engagement would exhibit the greatest benefit to response and recovery roles.
6. Integrate public health emergency preparedness (PHEP) into regular agency work through activities such as new employee orientation, annual refresher for Richfield's staff on emergency response roles and plans, etc. Foster connections with Richfield's staff working on related activities (e.g., disease prevention and control staff, immunization staff, environmental health staff).
7. Continue working on Richfield's preparedness and recovery plan components, (sections, annexes, appendices, etc.) that are identified as priorities.
8. Incorporate the Behavioral Health Strike Teams Fact Sheet (which describes the support and services the Teams can provide and how and when to access them) into All Hazard Plans appropriate for the city of Richfield.
9. Locate and review Richfield's Business Continuity Plan/Continuity of Operations Plan (COOP Plan).
10. If a COOP Plan exists, assure that information about Bloomington's and Richfield's public health roles and responsibilities for PHEP response and recovery are accurate.
11. Participate in the statewide full-scale exercise on March 29, 2016. This participation will fulfill one (1) exercise requirement as mandated by MDH.
12. Based on the PHEP capabilities, participate in the planning, conduct, and evaluation of one additional exercise (tabletop, functional or full scale) that includes public health objectives. When possible, Healthcare Coalition (consisting of healthcare organizations, public safety

and public health agencies) partners will be included. The exercise should include the needs of at-risk individuals.

13. Based on the PHEP capabilities, write after action reports/improvement plans (AAR/IPs) from exercises and significant incidents, continuing to document the status or completion of corrective actions from AAR/IPs from the past year. Retain this document for use in planning further exercises and later review as needed. Community Health Boards (CHBs) will report on completed corrective actions, based on tier, on End of Year Report.
14. Assure appropriate National Incident Management System (NIMS) training for Richfield's staff, following the CDC guidelines (outlined in PHEP Capability 3, Function 2, Resource Element S1 (priority)). Maintain appropriate NIMS training plan for Richfield's current and new staff.
15. Assure Multi-year Training and Exercise Plan is coordinated with the CHB Activities listed in Budget Period 4 (BP4) work plan.
16. Include at least one (1) leadership level position (CHB Administrators, Local Health Department (LHD) Directors, and other key agency leadership) from each CHB for participation in Public Health Incident Leadership training (MDH – University of Minnesota (UMN) developed training).
17. Identify Bloomington's role in supporting fatality management in the city of Richfield. MDH has developed a guide to the Public Health role in Fatality Management. Assure Bloomington's role is documented in Richfield's preparedness and response plans.
18. Acknowledge all State Health Alerts and Advisories. Transmit these Alerts and Advisories to local Health Alert Network recipients as requested by MDH within one (1) hour of receipt for Alerts and 24 hours for Advisories.
19. Communicate (separate from the Health Alert Network (HAN) messages) with the primary contact at each hospital or clinic at least once a year to confirm hospital's responsibilities when hospital contact receives a HAN message.
20. Request acknowledgement of every HAN message from hospital and clinic contacts. Submit response rates on two (2) MDH-selected messages. Report rates on these two (2) messages at Mid-Year or End of Year in the MDH Report Workbook. Distribute Health Alerts and Advisories to listed recipients. Request both acknowledgement and forwarding of message by hospital and clinic contacts every time. Monitor response rates. Work towards a target response rate of 100% for hospitals and 80% or more for clinics, within one (1) hour for Health Alerts and 24 hours for Health Advisories. If unable to reach those response rates, identify the barriers and work with MDH on possible technical assistance needs or the feasibility of participating in a Quality Improvement (QI) project.
21. Identify the lead agency for mass care within the city of Richfield on the Mid-Year Report (December 31, 2015).
22. Based on Richfield's priorities and previously identified roles and responsibilities, participate in local emergency management mass care planning.



23. Review and update Richfield's point of dispensing (POD) information in the medical countermeasures (MCM) tab in MDH Work Plan and Report Workbook.
24. Maintain POD plans that allow Richfield to provide prophylaxis to 100% of its residents (CDC Benchmark).
25. Assure Bloomington and Richfield staff have appropriate MCM training based on roles and responsibilities.
26. Participate in regional discussions to discuss staffing gaps and other models for staffing MCMs for an initial 48 hour response time and for longer duration responses. Provide the results of those discussions to MDH on the Mid-Year Report by December 31, 2015.
27. Continue working with other LHDs in the Twin Cities Metro Area to ensure and maintain public health representation on the Regional Healthcare Coalition Steering Committee.
28. Representatives to the Regional Healthcare Coalition Steering Committee must regularly provide information to public health directors and emergency preparedness coordinators in their region.
29. Identify the content and the process used to develop the Regional Healthcare Coalition's All-Hazard Plan, through a regional discussion.
30. Facilitate or participate in discussions about healthcare (hospital) surge in the city of Richfield.
31. Describe and support Richfield's efforts to build on Essential Services planning by facilitating discussions with county/city social services departments/sections about how to connect Richfield residents placed in Isolation or Quarantine into the social systems network (governmental, volunteer organizations active in disasters (VOADS), faith communities, etc.) to help build a strong infrastructure and support to help these residents during this time.
32. MN Responds Medical Reserve Corp (MRC) administrators will communicate with registered volunteers on a regular basis. Examples of communication could include: MN Responds MRC communications, written materials, training/volunteer/exercise opportunities, emergency preparedness news, information on public health initiatives, etc. Call-down drills do not qualify as retention communication.
33. Test volunteer notification by conducting a call down drill, based on Bloomington's choice of scenario.
34. If a statewide MN Responds MRC conference is held and local funds are sufficient to support attendance, the primary MN Responds MRC administrator would be required to attend this conference.
35. Complete the Operational Readiness Review (ORR) and the jurisdictional data sheet, as designated by CDC. Documentation must be submitted two (2) weeks prior to the site visit.
36. Participate in ORR site visit, as designated by CDC. Schedule and due date are to be determined by CDC and MDH, in consultation with Bloomington.

37. By April 24, 2016 (or date to be determined by MDH to comply with CDC determined due date), complete three (3) drills from list of CDC drills on the PHEP Cooperative Agreement Online Data Collection Submissions DCARS portal, upload drill data to the DCARS portal, and submit the adapted AAR/IP to the health.phep@state.mn.us email account.
38. Conduct a minimum of two (2) tactical communications drills between all management sites, testing varying modes of communications, and submit the adapted AAR/IP within 60 days of the drill to the health.phep@state.mn.us email account.
39. Conduct two (2) Call Downs drills of all staff needed to oversee staff POD planning department operations center (DOC) management and submit the adapted AAR/IP within 60 days of the drill to the health.phep@state.mn.us email account.
40. Provide culturally-specific training and technical assistance for community recovery psychosocial service providers in the city of Richfield to ensure the provision of culturally-responsive recovery services as part of Ebola preparedness efforts.



**STAFF REPORT NO. 192**  
**CITY COUNCIL MEETING**  
**11/24/2015**

REPORT PREPARED BY: Jim Topitzhofer, Recreation Services Director

DEPARTMENT DIRECTOR REVIEW: Jim Topitzhofer, Recreation Services Director  
11/17/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich  
11/19/2015

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of the amendment to the City of Richfield's 2012-2015 Municipal Recycling Grant application and agreement with Hennepin County.**

**EXECUTIVE SUMMARY:**

Hennepin County is seeking City action on our current municipal recycling agreement which expires December 31, 2015. The attached amendment extends the agreement one year, to terminate on December 31, 2016.

Another provision of the amendment requires the City of Richfield to operate its recycling program in accordance with the requirements described in the County's Residential Recycling Funding Policy, attached as attachment A. These requirements involve the distribution of a recycling guide to residents and at least two educational opportunities to promote recycling.

These are the same requirements listed in the original recycling grant and has been already been performed by the City each year.

**RECOMMENDED ACTION:**

**By motion: Approve the amendment to the City of Richfield's 2012-2015 Municipal Recycling Grant application and agreement with Hennepin County.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

The City of Richfield receives a municipal recycling grant from Hennepin County each year to coordinate recycling initiatives. Because the City of Richfield does not directly contract recycling services for residents, 90% of this grant is credited back to Richfield residents as a quarterly utility bill refund and 10% is used by the City to cover administrative costs of the recycling program. The City of Richfield's annual waste-tonnage report to Hennepin County serves as the application for the program. The original agreement is attached.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

City Council considers all contracts and agreements such as the attached amendment to the 2012-2015 Municipal Recycling Agreement with Hennepin County.

**C. CRITICAL TIMING ISSUES:**

The original 2012-2015 Municipal Recycling Agreement with Hennepin County terminates on December 31, 2015. Action on the attached amendment is required now to extend the grant one year, to expire on December 31, 2016.

**D. FINANCIAL IMPACT:**

The City of Richfield receives a grant in the amount of about \$85,000 per year from Hennepin County to perform recycling services. Because the City has open recycling and does not contract recycling services, 90% of the amount received from the Hennepin County Grant is returned to Richfield residents via a credit to their utility bill. 10% of the grant covers the City's expense to distribute a recycling guide to residents and to conduct education programs to promote recycling.

**E. LEGAL CONSIDERATION:**

The City Attorney has reviewed the attached amendment.

**ALTERNATIVE RECOMMENDATION(S):**

Reject the attached amendment to refuse grant funds from Hennepin County and reimbursement for recycling services to residents.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

There are no principal parties expected at the meeting.

**ATTACHMENTS:**

Description	Type
☐ Hennepin County Recycling Grant Amendment	Cover Memo
☐ Attachment A Recycling Funding Policy	Cover Memo
☐ Original 2012-2015 Recycling Grant Agreement	Cover Memo

## **AMENDMENT NO. 1 TO AGREEMENT A120129**

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 ("COUNTY"), on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Minneapolis, Minnesota 55415-1600 ("DEPARTMENT") and the CITY OF RICHFIELD, 6700 Portland Avenue South, Richfield, Minnesota 55423-2599 ("CITY").

WHEREAS, the COUNTY and the CITY entered into a four-year Residential Recycling Grant Agreement, Contract No. A120129 ("Agreement"), for a residential recycling grant commencing on January 1, 2012; and

WHEREAS, the County Board, by Resolution No. 15-0216 adopted on June 16, 2015, amended the Hennepin County Residential Recycling Funding Policy to incorporate requirements to expend additional SCORE funds on organics recycling, extended the period from December 31, 2015 to December 31, 2016, and authorized grant funding for municipal recycling programs consistent with said policy; and

WHEREAS, the parties desire to amend the Agreement to extend the term and incorporate other changes;

NOW, THEREFORE, the parties agree that Agreement A120129 is amended as follows:

1. Paragraph a. of Section 1, TERM AND COST OF THE AGREEMENT, shall be amended to read as follows:

This Agreement shall commence upon execution and terminate on December 31, 2016.

2. Section 2, SERVICES TO BE PROVIDED, shall be amended to read as follows:

The CITY shall operate its recycling program in accordance with the requirements described in the County's Residential Recycling Funding Policy ("Policy"), attached as Attachment A and incorporated by this reference, and fulfill the responsibilities of the Policy.

3. Section 3, METHOD OF PAYMENT, shall be amended to read as follows:

The COUNTY will distribute SCORE funds as described in the Policy. The CITY shall follow the requirements for use of funds described in the Policy.

Except as amended, the terms, conditions and provisions of this Agreement shall remain in full force and effect.

## COUNTY BOARD AUTHORIZATION

Reviewed by the County Attorney's  
Office

\_\_\_\_\_  
Assistant County Attorney

Date: \_\_\_\_\_

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By: \_\_\_\_\_  
Chair of Its County Board

ATTEST: \_\_\_\_\_  
Deputy/Clerk of County Board

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Hough, County Administrator

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant County Administrator, Public Works

Date: \_\_\_\_\_

### Recommended for Approval

By: \_\_\_\_\_  
Director, Environment and Energy Department

Date: \_\_\_\_\_

### MUNICIPALITY

CITY warrants that the person who executed  
this Agreement is authorized to do so on behalf of  
CITY as required by applicable articles,  
bylaws, resolutions or ordinances.\*

Printed Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*CONTRACTOR shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time CONTRACTOR returns the Agreement to the COUNTY. Documentation is not required for a sole proprietorship.

# **Attachment A**

## **Hennepin County Residential Recycling Funding Policy**

**January 1, 2012 – December 31, 2016**



**Public Works  
Environment and Energy Department**

## **I. Policy Description**

The Hennepin County Board of Commissioners determined that curbside collection of recyclables from Hennepin County residents is an effective strategy to reduce reliance on landfills, prevent pollution, reduce the toxicity of waste, conserve natural resources and energy, improve public health, support the economy, and reduce greenhouse gases. Therefore, the county adopted the goals established by the Minnesota Pollution Control Agency (MPCA) in its Metropolitan Solid Waste Management Policy Plan and developed a Residential Recycling Funding Policy to help reach a 75% recycling rate by 2030.

The county will distribute all Select Committee on Recycling and the Environment (SCORE) funds received from the state to cities for curbside collection of residential recyclables, including organics. If cities form a joint powers organization responsible for managing a comprehensive recycling and waste education system for the residents of those cities, the county will distribute a recycling grant to that organization. Cities are expected to fulfill the conditions of the policy.

### **Length of Residential Recycling Funding Policy**

Hennepin County is committed to implement this policy and continue distributing all SCORE funds received from the state for the purpose of funding curbside residential recycling programs from January 1, 2012 through December 31, 2016. The county may revise this policy if it determines changes are needed to assure compliance with state law and MPCA goals established for metropolitan counties. In the event that SCORE funds are eliminated from the state budget or significantly reduced, the county will consult with cities to develop a subsequent recommendation for the county board that will continue this policy and fund curbside recycling programs.

### **Fund Distribution**

The county will distribute to the cities one hundred percent (100%) of SCORE funds that the county receives from the state. SCORE funds are based on revenue collected by the State of Minnesota from the solid waste management (SWM) tax on garbage services. SCORE funds are subject to change based on actual SWM revenue and the funds allocated by the State Legislature. Funds distributed to cities for the current calendar year will be based on SCORE funds received by the county in the state's corresponding fiscal year.

In 2014 the State Legislature allocated additional funds to SCORE in 2015 and 2016. Beginning in fiscal year 2015 and continuing thereafter, of any money distributed that exceeds the amount the county received in fiscal year 2014, 50 percent must be expended on organics recycling.



## II. Recycling

### Allocation of Funds

The following formula will be utilized to determine each city's recycling SCORE grant each year.

$$\frac{\text{\# of households with curbside recycling in city}}{\text{Total \# of households with curbside recycling in county}} \times \frac{\text{Total SCORE funds available for recycling}}{1} = \text{Recycling grant amount available to the city}$$

Eligible households are defined as single family through eight-plex residential buildings or other residential buildings where each housing unit sets out refuse and recycling containers for curbside collection. The cities will determine the number of eligible households by counting the number of households with curbside recycling service on January 1 of each funding year. The number will be reported in the application for funding.

The total SCORE grant available for recycling will equal the 2014 base year amount plus 50 percent of additional SCORE funds. If the total SCORE funds are less than the 2014 base year, 100 percent of those funds will be available for recycling.

The grant can be used for recycling program expenses including capital and operating costs. Expenses associated with residential collection of organics are eligible recycling program expenses. However, yard waste expenses are ineligible. If organics and yard waste are commingled, the organics expenses must be tracked separately.

### Responsibilities of Cites

#### A. Grant Agreement

Each city seeking funding under the terms of the Residential Recycling Funding Policy must enter into a Residential Recycling Grant Agreement with the county for a term concurrent with the expiration of this policy, December 31, 2016. The grant agreement must be accompanied by a resolution authorizing the city to enter into such an agreement.

#### B. Application for Funding

Each city must complete an annual application by February 15 to receive funding for that year. The application consists of the Re-TRAC web-based report and a planning document submitted to the county describing the programs or activities the applicant will implement to increase recycling and make progress toward recycling goals.

#### C. Minimum Program Performance Requirements

1. Collection of Recyclables. Cities that contract for curbside recycling services will require a breakout of the following expenses when renewing or soliciting bids for new recycling services:
  - a) containers – if provided by the hauler
  - b) collection service
  - c) processing cost per ton
  - d) revenue sharing
2. Materials to be Collected. At a minimum, the following materials must be collected curbside:
  - a) Newspaper and inserts;
  - b) Cardboard boxes;
  - c) Glass food and beverage containers;
  - d) Metal food and beverage cans;
  - e) All plastic containers and lids, #1 – Polyethylene Terephthalate (PET, PETE), #2 High Density Polyethylene (HDPE), #3 – Vinyl Polyvinyl Chloride (PVC), #4 – Low Density Polyethylene (LDPE) and #5 – Polypropylene (PP) plastic bottles, except those that previously contained hazardous materials or motor oil;
  - f) Magazines and catalogs;
  - g) Cereal, cracker, pasta, cake mix, shoe, gift, and electronics boxes;
  - h) Boxes from toothpaste, medications and other toiletries;
  - i) Aseptic and gable-topped containers; and
  - j) Mail, office and school papers.

The county may add materials to this list and require cities to begin collection within one year of receiving notification from the county. Cities will notify the county if materials not found on this list will be collected.

3. Collection Methods. Cities must use one of the following systems to collect materials at the curb:
  - a) single sort system - all materials combined in one container; or
  - b) dual sort system - glass, metal and plastic together with paper separate

If one of these two systems is not in place, the city must submit a plan with its application for converting to a single or dual sort system by December 31, 2016. If the municipality is unable to meet this deadline, an alternative implementation schedule must be negotiated with the county.

4. Education and Outreach.
  - a) County Responsibilities

- 1) Coordinate meetings of the communications committee, which will be composed of county, cities, and other stakeholders.
- 2) Produce education material templates and print the template materials for cities. Materials will also be available online to download.
- 3) Provide a minimum of eight promotional resources that will include a newsletter article, a web story, social media posts, and printed promotional materials for municipalities on a variety of waste reduction, reuse, recycling, and proper disposal messages.
- 4) Develop an annual priority message campaign. The campaign will be one main message to promote throughout the year; for example “recycle magazines.” The message and the materials will be developed with the communications committee. The county will provide templates and be responsible for primary distribution of the campaign through direct mail, advertising, or public relations. The cities will be required to support the campaign through their communication channels.

b) City Requirements

- 1) Use county terminology when describing recycling guidelines (i.e. description of materials accepted and not accepted, preparation guidelines, etc.).
- 2) Use images provided by the county or the Solid Waste Management Coordinating Board, if using images of recyclables.
- 3) Use the county’s terminology, preparation guidelines and images on the city’s website.
- 4) Mail a recycling guide once a year to residents using a template developed by the communications committee and produced and printed by the county at the county’s expense. If a municipality does not want to use the template produced by the county, the municipality may develop its own guide at the municipality’s expense, with prior approval by the county. If the city relies on its hauler to provide the recycling guide, this guide would also require approval by the county.
- 5) Complete two additional education activities from a menu of options developed by the communications committee to support the priority message campaign.

Any print material that communicates residential recycling guidelines that were not provided by the county template will require county approval. This does not apply to waste reduction and reuse, articles on recycling that do not include guidelines, and social media posts. The county will respond within five business days to any communication piece submitted.

5. Use of Funds.

- a) The city must use all grant funds for waste reduction and recycling capital and operating expenses in the year granted. Cities will not be reimbursed any funds in excess of actual expenses.
- b) The city may not charge its residents through property tax, utility fees or any other method for that portion of the costs of its recycling program funded by county grant funds.
- c) The city must establish a separate accounting mechanism, such as a project number, activity number, or fund that will separate recycling revenues and expenditures from other municipal activities, including solid waste and yard waste activities.
- d) Recycling and waste reduction activities, revenues, and expenditures are subject to audit.
- e) Cities that do not contract for curbside recycling services will receive grant funds provided that at least ninety percent (90%) of the grant funds are credited back to residents and the city meets all minimum program requirements. The additional ten percent (10%) may be used for administrative and promotional expenses.

6. Reporting Requirements.

- a) Each city must submit an annual recycling report to the county electronically using the Re-TRAC web-based reporting system by February 15 of each year. If a city is unable to access Re-TRAC, the county must be contacted by February 1 to make arrangements for alternative filing of the report.
- b) Each city must calculate its participation rate in the curbside recycling program during the month of October. The participation rate will be reported in Re-TRAC. The methodology for measuring participation must be provided to the county upon request.
- c) Each city must submit an annual planning document to the county describing the programs or activities the applicant will implement to increase recycling and make progress toward county goals.

7. Recycling Performance. On an annual basis, each city must demonstrate a reasonable effort to maintain and increase the average amount of recyclables collected from its residential recycling program to at least 725 pounds per household or a minimum recovery rate of 80%, by December 31, 2015. The goal remains the same for December 31, 2016. An alternative performance option for cities with organized waste collection is to validate at least a 35% recycling rate. To ensure the accuracy of data for these metrics, cities will be required, upon request, to provide documentation on the methodology used to calculate performance. To the extent practicable, the results should rely on actual data rather than estimates.

Failure by a city to demonstrate measureable progress toward goals will result in the city being required to submit a recycling improvement plan within 90 days of being notified by the county. The recycling improvement plan must be negotiated with the county and specify the efforts that will be undertaken to yield the results necessary to achieve the goals. The plan shall focus on the following areas: type of container, sort method, materials collected,

frequency of collection, education and outreach, performance measurement, and incentives. Funding will be withheld until the city's recycling improvement plan is approved by the county.

In cooperation with the county, the city may be required to participate in waste and recycling sorts to identify recovery levels of various recyclables in their communities. Based on the results of the study, the county and city will collaborate to increase the recovery of select recyclable materials being discarded in significant quantities.

#### **D. Partnership**

The partnership between the county and cities has been highly effective in educating and motivating behavior of residents resulting in significant amounts of waste being reduced and recycled. In order to continue this partnership and increase these efforts, program activities of cities must be coordinated with county and regional efforts. Cities are responsible for cooperating with the county in an effort to reach the county's goals for recycling and organics recovery. Quarterly recycling coordinator meetings are an opportunity to share resources and facilitate the coordination of efforts.

### **Responsibilities of Hennepin County**

#### **A. Application Form**

The county will provide an application form by December that each city will use to report on its recycling program and request grant funding for the next year.

#### **B. Payments**

The county will make grant payments to each city in two equal payments. One payment will be made after the county receives the application, which will consist of the Re-TRAC report and the planning document. A second payment will be made after the report has been approved, measurable progress toward the goals has been confirmed, and, if necessary, a recycling improvement plan has been approved by the county. If the city meets the county requirements, both payments will be made during the same calendar year.

### III. Organics Recycling

#### Allocation of Funds

The following formula will be used to determine a city's organics grant each year.

$$\frac{\text{Number of households with curbside organics in city}}{\text{Total number of households with curbside organics in county}} \times \frac{\text{Total SCORE funds available for organics}}{1} = \frac{\text{Organics grant amount available to the city}}{1}$$

The total SCORE funds available for organics recycling will equal 50 percent of the additional SCORE revenue allocated by the State Legislature. If the total SCORE funding is less than the 2014 base year, no funds will be available for organics recycling.

#### Application for Funds

To apply for funds, a city must submit the number of eligible households that signed up for organics to the county by September 1 of each funding year.

#### Use of Funds

The grant funds may be used for organics program expenses, including the following:

- Contract cost of service (to the city or its residents)
- Discount to new customers
- Carts
- Compostable bags
- Kitchen containers
- Education and outreach

Program administration is an ineligible expense. Yard waste expenses are ineligible expenses. If organics and yard waste are collected together, the organics expenses must be tracked separately. If the city passes funds through to a hauler, 100% of those funds must be credited to households' bills.

In addition, the following requirements apply:

- All grant funds must be used during the term of the agreement. Funds not spent must be returned to the county.
- Funds must be expended on eligible activities per Minnesota State Statute 115A.557.
- A city may not charge its residents through property tax, utility fees or any other method for that portion of the costs of its organics program funded by county grant funds.
- Cities must be able to account for organics expenditures separately upon request by the county. Expenditures are subject to audit.

## **Education and Outreach**

The partnership between the county and cities has been highly effective in educating and motivating the behavior of residents, resulting in significant amounts of waste being reduced and recycled. In order to continue this partnership with organics recycling, the county encourages cities to coordinate program activities with county and regional efforts.

The county will work with cities to provide assistance with the following:

- Standard terminology and images
- Organics recycling guide (yes-no list)
- Promotional resources to increase participation

## **Reporting**

A report on the city's organics program must be submitted electronically to the county by February 15 following each funding year. The report must include, but is not limited to, the following:

Basic Program Information:

- Hauler
- Collection method
- Where organics are delivered to and processed at
- Is service opt-in or opt-out
- Cost of service to residents and contract cost to the city
- How the service is billed
- Items included in service: curbside collection, cart, compostable bags, etc.

Results

- Tons
- Number of households signed up
- Average pounds per household per year
- Participation (set-out rate on pickup day)
- How funds were used

## RESIDENTIAL RECYCLING GRANT AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 (the "COUNTY"), on behalf of the Hennepin County Department of Environmental Services, 701 Fourth Avenue South, Minneapolis, Minnesota 55415-1600 ("DEPARTMENT") and the CITY OF RICHFIELD, 6700 Portland Avenue South, Richfield, Minnesota 55423-2599 ("CITY").

### WITNESSETH:

WHEREAS, the County Board, by Resolution No. 11-0476S1, adopted on November 29, 2011, approved the Hennepin County Residential Recycling Funding Policy ("Funding Policy") for the period January 1, 2012, through December 31, 2015, and authorized grant funding for municipal recycling programs consistent with the Funding Policy; and

WHEREAS, the CITY operates a municipal curbside residential recycling program and other waste reduction and recycling activities (the "Recycling Program") as described in the grant application (the "Grant Application") referred to in Section 2 below; and

WHEREAS, the Recycling Program is consistent with Minnesota Statutes, Chapter 115A; the Minnesota Pollution Control Agency's Metropolitan Solid Waste Management Policy Plan; Hennepin County's Solid Waste Management Master Plan; and Hennepin County's Residential Recycling Funding Policy.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the COUNTY, on behalf of the DEPARTMENT, and the CITY agree as follows:

#### 1. TERM AND COST OF THE AGREEMENT

- a. This Agreement shall commence upon execution and terminate on December 31, 2015.
- b. The total grant payment for the year 2012 shall be equal to eighty four thousand eight hundred twenty-eight dollars (\$84,828). Grant payments for subsequent years shall be calculated as set forth in Section 3.

#### 2. SERVICES TO BE PROVIDED

- a. The CITY shall operate the Recycling Program as more fully described in the Funding Policy and the Grant Application. The CITY agrees to submit an updated Grant Application by February 15 of each year of the term of this Agreement in order to be eligible for grant funds. The application consists of the Re-TRAC web-based report and a planning document submitted to the COUNTY describing the programs or activities the CITY will implement to increase recycling and make progress toward COUNTY goals. The terms of the Grant Application, as updated each year, are incorporated herein by reference.
- b. In addition to the services referred to above, the CITY agrees as follows:



1) Requests for Proposals and Contracts.

a.) If contracting for curbside recycling services, the CITY shall require a breakout of the following expenses when renewing or soliciting new proposals or bids for recycling services:

- Containers – if provided by the hauler;
- Collection service;
- Processing cost per ton;
- Revenue sharing.

b.) The COUNTY recommends the CITY request the following information in the Request for Proposal/Bid or contract:

- Destination of recyclable materials, including the facility name, location, and end market;
- Monthly prices for recyclable materials by material type;
- Residue rates at the Materials Recovery Facility (MRF);
- Composition of residue.

2) Materials to be Collected. At a minimum, the CITY shall collect the following materials curbside:

- a.) Newspaper and inserts;
- b.) Cardboard boxes;
- c.) Glass food and beverage containers;
- d.) Metal food and beverage cans;
- e.) All plastic containers and lids, #1 – Polyethylene Terephthalate (PET, PETE), #2 High Density Polyethylene (HDPE), #3 – Vinyl Polyvinyl Chloride (PVC), #4 – Low Density Polyethylene (LDPE) and #5 – Polypropylene (PP) plastic bottles, except those that previously contained hazardous materials or motor oil;
- f.) Magazines and catalogs;
- g.) Cereal, cracker, pasta, cake mix, shoe, gift, and electronics boxes;
- h.) Boxes from toothpaste, medications and other toiletries;
- i.) Aseptic and gable-topped containers; and
- j.) Mail, office and school papers.

3) Collection Methods. The CITY shall use one of the following systems to collect materials at the curb:

- a.) Single sort system - all materials combined in one container; or
- b.) Dual sort system - glass, metal and plastic together with paper separate.

If one of these two systems is not currently in place, the CITY must submit a plan with their 2012 Grant Application for converting to a single or dual sort system by December 31, 2012. If the CITY is unable to meet this deadline, an alternative implementation plan must be negotiated with and approved by the

COUNTY. The implementation plan will include the reasons why an extension is needed, the projected timeline, and details about each step of the process. The CITY will also provide the COUNTY with updates to the plan as implementation progresses.

4) Education and Outreach. The CITY shall:

- a.) Use COUNTY terminology when describing recycling guidelines (i.e. description of materials accepted and not accepted, preparation guidelines, etc.)
- b.) Use images provided by the COUNTY or the Solid Waste Management Coordinating Board (SWMCB) if using images of recyclables.
- c.) Use the COUNTY's terminology, preparation guidelines and images on the CITY's website.
- d.) Mail a recycling guide once a year to residents using a template developed jointly through a communications committee and produced and printed by the COUNTY at the COUNTY's expense. If the CITY does not want to use the template produced by the COUNTY, the CITY may develop its own guide at the municipality's expense, but it must be approved by the COUNTY. If the CITY relies on the hauler to provide the recycling guide, this guide would also require approval by the COUNTY.
- e.) Complete two additional education activities from a menu of options developed by the communications committee to support the priority message campaign. Templates will be provided by the COUNTY.

Any print material that communicates residential recycling guidelines that were not provided by the COUNTY template will require COUNTY approval. This does not apply to waste reduction and reuse, articles on recycling that do not include guidelines, and social media posts. The COUNTY will respond within five business days to any communication piece submitted.

5) Use of Grant Funds.

- a.) Grant funds can be used for all Recycling Program expenses including capital and operating costs. Expenses associated with residential collection of organics are considered eligible Recycling Program expenses. However, yard waste expenses are not eligible Recycling Program expenses. If organics and yard waste are commingled, the organics expenses must be tracked separately.
- b.) All grant funds accepted from the COUNTY must be used for Recycling Program capital and operating expenses in the year granted.
- c.) The CITY may not charge its residents through property tax, utility fees or any other method for that portion of the costs of its Recycling Program funded by COUNTY grant funds.
- d.) The CITY shall establish a separate accounting mechanism, such as a project number, activity number, or fund that will separate recycling and waste reduction revenues and expenditures from other municipal activities, including solid waste and yard waste activities.

- e.) Recycling and waste reduction activities, revenues, and expenditures are subject to audit by the COUNTY.
- f.) The CITY shall not retain any grant funds in excess of actual Recycling Program expenses.
- g.) If the CITY does not contract for curbside recycling services, the CITY will receive grant funds provided that at least ninety percent (90%) of the grant funds are credited back to residents and the CITY meets all minimum program requirements. The additional ten percent (10%) may be used for CITY administrative and promotional expenses.

6) Reporting Requirements.

- a.) The CITY shall submit an annual recycling report to the COUNTY utilizing the Re-TRAC web-based reporting system by February 15 of each year. If the CITY is unable to access the Re-TRAC system, the COUNTY must be contacted by February 1 to make arrangements for alternative filing of the required report.
- b.) The CITY will not report residue as a part of recycling tonnages. The CITY will make arrangements with its hauler to report residue separately.
- c.) The CITY shall annually measure the participation rate in the curbside Recycling Program during the month of October. The rate will be calculated by dividing the number of households setting out recycling by the total number of households (accounts) with recycling service. The participation rate will be reported in Re-TRAC.
- d.) The CITY shall submit an annual planning document to the COUNTY describing the programs or activities the CITY will implement to increase recycling and make progress toward COUNTY goals.
- e.) To help monitor progress, the CITY shall provide an update on recycling tonnages and program activities to the COUNTY upon request. The CITY shall then provide the quarterly tonnage report received from its haulers or make arrangements with the haulers to send the information directly to the COUNTY.

- 7) Recycling Performance. On an annual basis, the CITY shall demonstrate that a reasonable effort has been made to maintain and increase the average amount of recyclables collected from their residential Recycling Program to at least 725 pounds per household or achieve a minimum recovery rate of 80% by December 31, 2015. Alternatively, if the CITY has a method in place to accurately measure total waste generation (garbage and recycling), then the CITY may choose a 35% recycling rate as the performance standard. To ensure the accuracy of data for these metrics the CITY will be required, upon request, to provide documentation on the methodology used to calculate performance. To the extent practicable, the results should rely on actual data rather than estimates.

Failure by the CITY to demonstrate measureable progress towards one of these goals will result in the requirement that a Recycling Improvement Plan be submitted by the CITY within 90 days of being notified by the COUNTY. The Recycling Improvement Plan must be negotiated with and approved by

the COUNTY. The Recycling Improvement Plan will include actions the CITY will take to improve the performance of its Recycling Program to achieve the 2015 goals. The plan will focus on program changes and additional activities in the following areas: materials collected, sort method, type of container, frequency of collection, education and outreach, performance measurement, contract management, and incentives. Funding will be withheld until the CITY's Recycling Improvement Plan is approved by the COUNTY.

In cooperation with the COUNTY, the CITY may be required to participate in waste and recycling sorts to identify recovery levels of various recyclables in their community. Based on the results of the study, the COUNTY and the CITY will collaborate to increase the recovery of select recyclable materials being discarded in significant quantities.

- 8) Public Entity Recycling. Pursuant to Minnesota Statutes, Section §115A.151, the CITY shall ensure that facilities under its control, from which mixed municipal solid waste is collected, have containers for at least three recyclable materials, such as, but not limited to, paper, glass, plastic, and metal, and transfer all recyclable materials collected to a recycler.

### 3. METHOD OF PAYMENT

- a. The COUNTY will annually distribute to Hennepin County municipalities grant funds only to the extent the COUNTY receives SCORE funds from the State of Minnesota. SCORE funds are based on revenue received by the State of Minnesota from a sales tax on garbage collection and disposal fees. SCORE funds are subject to change based on actual revenue received by the State and funds allocated by the legislature. The following formula will be utilized to determine the CITY's SCORE grant for each year:

$$\begin{array}{rcl}
 \begin{array}{l} \# \text{ of Households Served} \\ \text{Curbside by CITY} \end{array} & \times & \begin{array}{l} \text{Total SCORE Revenue} \\ \text{Received by COUNTY} \\ \text{from State of Minnesota} \end{array} & = & \begin{array}{l} \text{Grant Funds} \\ \text{Distributed to} \\ \text{CITY} \end{array} \\
 \hline
 \begin{array}{l} \text{Total \# of Households Served} \\ \text{Curbside in COUNTY} \end{array} & & & & 
 \end{array}$$

- b. Under no circumstances will the COUNTY's distribution of grant funds exceed the CITY's proportion of SCORE fund revenues received by the COUNTY.
- c. The initial grant fund payment will be forwarded after the County Board receives and approves this Agreement signed by an authorized official of the CITY. Provided the CITY is otherwise in compliance with the terms of this Agreement, future grant fund payments will be made after submittal by the CITY and approval by the COUNTY of the updated Grant Application as described in Section 2 and receipt by the COUNTY of SCORE funds from the State of Minnesota.
- d. Annual grant payments will be made to the CITY in two equal payments. One payment will be made after the COUNTY receives the Grant Application, which consists of the Re-TRAC report and a planning document. A second payment will

be made after the report has been approved, measurable progress toward the 2015 goal has been confirmed, and, if necessary, a Recycling Improvement Plan has been approved by the COUNTY. If the CITY meets the COUNTY requirements, both payments will be made during the same calendar year.

4. PROFESSIONAL CREDENTIALS

INTENTIONALLY OMITTED

5. INDEPENDENT CONTRACTOR

CITY shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting CITY as the agent, representative, or employee of the COUNTY for any purpose. CITY is and shall remain an independent contractor for all services performed under this Agreement. CITY shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of CITY or other persons while engaged in the performance of any work or services required by CITY will have no contractual relationship with the COUNTY and will not be considered employees of the COUNTY. The COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against CITY, its officers, agents, contractors, or employees. CITY shall defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers, and employees from all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from the COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

7. INDEMNIFICATION

CITY agrees to defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of CITY, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CITY to perform any obligation under this Agreement.

8. INSURANCE

- A. With respect to the services provided pursuant to this Agreement, CITY agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force the following insurance coverages, either under a self-insurance program or purchased insurance:



## Limits

COUNTY does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

- C. Duty to Notify. CITY shall promptly notify the COUNTY of any claim, action, cause of action or litigation brought against CITY, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. CITY shall also notify the COUNTY whenever CITY has a reasonable basis for believing that CITY and/or its employees, officers, agents or subcontractors, and/or the COUNTY, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Agreement.

9. DATA PRACTICES

CITY, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act (HIPAA) and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. CITY agrees to defend, indemnify and hold harmless the COUNTY, its officials, officers, agents, employees, and volunteers from any claims resulting from CITY's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. CITY agrees to promptly notify the COUNTY if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

10. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5, CITY agrees that the COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CITY and involve transactions relating to this Agreement. CITY shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its termination or cancellation.

11. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. CITY binds itself, its partners, successors, assigns and legal representatives to the COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. CITY shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of the COUNTY. A consent to assign shall be subject to such conditions and provisions as the COUNTY may deem

necessary, accomplished by execution of a form prepared by the COUNTY and signed by CITY, the assignee and the COUNTY. Permission to assign, however, shall under no circumstances relieve CITY of its liabilities and obligations under the Agreement.

- C. CITY shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of the COUNTY. Permission to subcontract, however, shall under no circumstances relieve CITY of its liabilities and obligations under the Agreement. Further, CITY shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CITY and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions specified. CITY shall make contracts between CITY and subcontractors available upon request.

## 12. MERGER AND MODIFICATION

- A. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties.

## 13. DEFAULT AND CANCELLATION

- A. If CITY fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, it shall be in default. Unless CITY's default is excused by the COUNTY, the COUNTY may upon written notice immediately cancel this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for the COUNTY to delay payment until CITY's compliance. In the event of a decision to withhold payment, the COUNTY shall furnish prior written notice to CITY.
- B. Notwithstanding any provision of this Agreement to the contrary, CITY shall remain liable to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by CITY.
- C. The above remedies shall be in addition to any other right or remedy available to the COUNTY under this Agreement, law, statute, rule, and/or equity.
- D. The COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not



constitute a general waiver or relinquishment throughout the entire term of the Agreement.

- E. This Agreement may be canceled with or without cause by either party upon thirty (30) day written notice.
- F. Upon early termination or cancellation of this Agreement, the CITY shall itemize any and all grant funds expenditures up to the date of termination or cancellation and return such grant funds not yet expended.
- G. Upon written notice, COUNTY may immediately suspend or cancel this Agreement in the event any of the following occur: (i) COUNTY does not obtain anticipated funding from an outside source for this project; (ii) funding for this project from an outside source is withdrawn, frozen, shut-down, is otherwise made unavailable or COUNTY loses the outside funding for any other reason; or (iii) COUNTY determines, in its sole discretion, that funding is, or has become, insufficient. COUNTY is not obligated to pay for any services that are provided after notice and effective date of termination. In the event COUNTY cancels this Agreement pursuant to the terms in this paragraph 13(G), COUNTY shall pay any amount due and payable prior to the notice of suspension or cancellation pursuant to the terms herein except that COUNTY shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for services not then performed, costs, expenses or profits on work done.

14. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement include but are not limited to: INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DATA PRACTICES; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION; PROMOTIONAL LITERATURE; and MINNESOTA LAW GOVERNS.

15. CONTRACT ADMINISTRATION

In order to coordinate the services of the CITY with the activities of the Department of Environmental Services so as to accomplish the purposes of this contract, Dave McNary, Solid Waste Division Manager, or his or her successor, shall manage this contract on behalf of the COUNTY and serve as liaison between the COUNTY and the CITY.

16. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CITY shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. CITY shall comply with all applicable conditions of the specific referenced grant.

17. SUBCONTRACTOR PAYMENT

As required by Minnesota Statutes Section 471.425, Subd. 4a, CITY shall pay any subcontractor within ten (10) days of CITY's receipt of payment from the COUNTY for undisputed services provided by the subcontractor. CITY shall pay interest of 1½ percent

per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, CITY shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including any attorney's fees, incurred in bringing the action.

18. PAPER RECYCLING

The COUNTY encourages CITY to develop and implement an office paper and newsprint recycling program.

19. NOTICES

Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the originating Department at the address given in the opening paragraph of the Agreement. Notice to CITY shall be sent to the address stated in the opening paragraph of the Agreement.

20. CONFLICT OF INTEREST

CITY affirms that to the best of CITY's knowledge, CITY's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. CITY agrees that, should any conflict or potential conflict of interest become known to CITY, CITY will immediately notify the COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the COUNTY whether CITY will or will not resign from the other engagement or representation.

21. PROMOTIONAL LITERATURE

CITY agrees, to the extent applicable, to abide by the current Hennepin County Communications Policy (available upon request). This obligation includes, but is not limited to, CITY not using the term "Hennepin County" or any derivative in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of a COUNTY Department Director or equivalent.

22. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

## COUNTY BOARD AUTHORIZATION

Reviewed by the County Attorney's  
Office

*Pamela Feys*  
Assistant County Attorney

Date: 6/1/12

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By: *Michael Pat*  
Chair of Its County Board

ATTEST: *Yec Clerk*  
Deputy/Clerk of County Board

Date: 6-8-12

By: *Richard P. Johnson*  
Richard P. Johnson, County Administrator

Date: 6-7-12

By: *Debbie R. Bess*  
Assistant County Administrator, Public Works

Date: 6/6/2012

### Recommended for Approval

By: *Carl Michaud*  
Director, Department of Environmental Services

Date: 5/31/12

### MUNICIPALITY

CITY warrants that the person who executed  
this Agreement is authorized to do so on behalf of  
CITY as required by applicable articles,  
bylaws, resolutions or ordinances.\*

Signature: *Debbie Goettel* *Steven Derrich*

Name (Printed): Debbie Goettel Steven Derrich

Title: Mayor City Manager

Date: 5-21-2012 5-21-2012

\*CITY shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time CITY returns the Agreement to the COUNTY. Documentation is not required for a sole proprietorship.